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RICHARD T. ELY, PH.D., LL.D., EDITOR.

NUMBER TWO

THE REPUDIATION OF STATE DEBTS

A STUDY IN THE FINANCIAL HISTORY OF MISSISSIPPI, FLORIDA, ALABAMA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA, LOUISIANA, ARKANSAS, TENNESSEE, MINNESOTA, MICHIGAN, AND VIRGINIA.

BY
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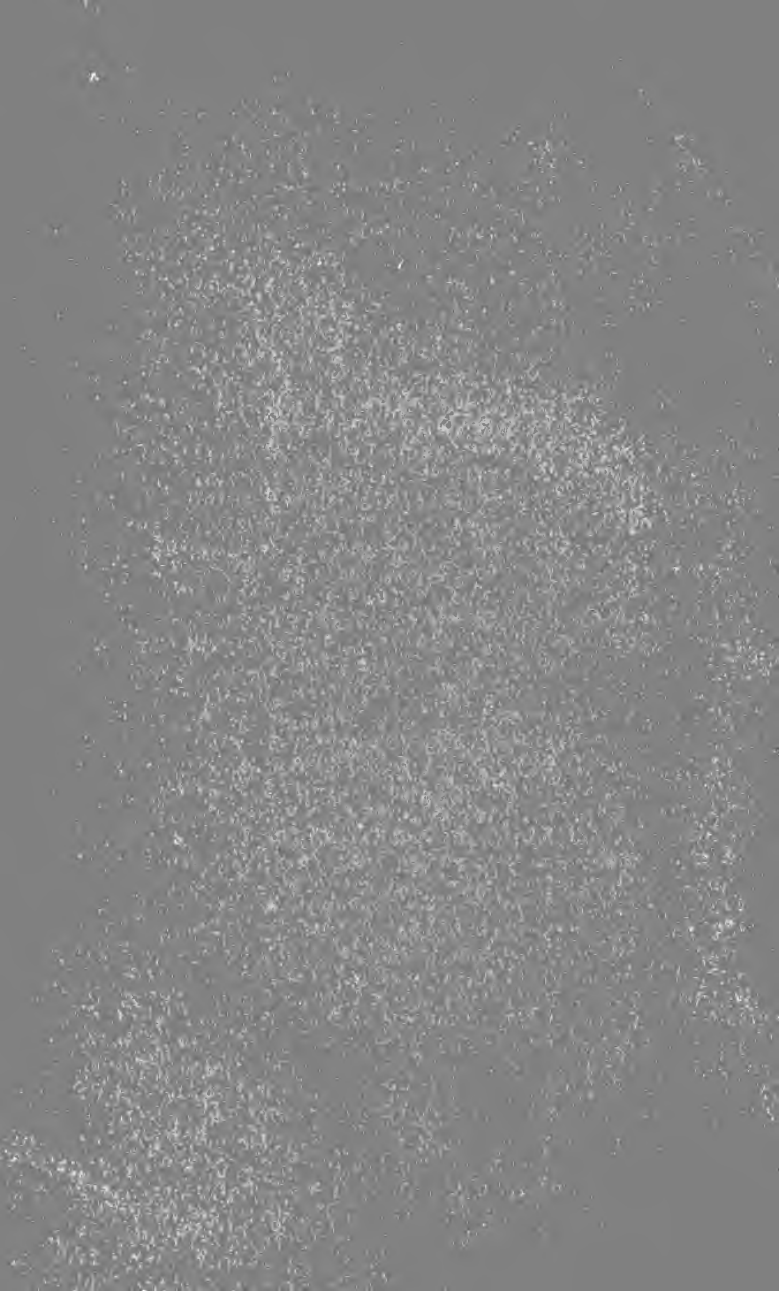
ASSISTANT PROFESSOR OF POLITICAL ECONOMY IN THE UNIVERSITY OF WISCONSIN.

NEW YORK: 46 EAST FOURTEENTH STREET.
THOMAS Y. CROWELL & CO.
BOSTON: 100 PURCHASE STREET.



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THE present monograph consists of chapters I., II., and VII. of a book which was presented in manuscript one year ago to the Johns Hopkins University as a Doctor's thesis, and which has just been published by T. Y. Crowell & Co. The character of the remaining chapters is explained in the preface which follows. The selections herewith presented are representative of the book, and are separately published for the Johns Hopkins University in order to meet the requirements for printing a Doctor's thesis.

PREFACE.

THE field of financial history which is covered by this volume has been heretofore left almost entirely uncultivated by students of American finance. With the exception of an article by Hon. R. P. Porter in the *International Review* for November, 1880, and another contributed to "Lalor's Cyclopædia," by George Walton Green, and afterwards expanded by the Society for Political Education, as Economic Tract No. 11, very little has been written upon it. Neither of these articles furnishes a statement of facts complete and exhaustive enough to form the basis of accurate scientific judgments, and both of them omit the discussion of important questions.

The present volume treats of four main topics. Chapter I. presents those features of our constitutional law, state and national, which bear upon the subject of the repudiation of State debts, and

leads to the conclusion that the holder of a repudiated bond has no efficient means for enforcing the payment of his dues; Chapters II. to VI., inclusive, describe with considerable detail the history of the various acts of repudiation passed by the twelve States named on the title-page; Chapter VII. attempts a scientific interpretation and explanation of the facts presented; and the closing chapter contains a critical discussion of various remedies for the evil of State defalcation and financial dishonesty.

The term repudiation as herein employed includes cases of the "scaling" of debts and of refusal to pay bonds which were not valid obligations of the States, either from a moral or a legal standpoint. It may perhaps be objected that such an extension of the term is not justified by ordinary usage; and that the compromise of a debt on terms which reduce the principal and interest, or the refusal to pay bonds which are *claimed* to represent a just debt but *do not*, cannot in justice be termed repudiation. Though the author has no desire to attempt to justify so broad an extension of the meaning of the term on grounds of derivation or usage, it has seemed to him proper to use it on the title-page and elsewhere as generally and

broadly descriptive of the class of financial acts herein treated.

I am under special obligations to Mr. J. R. Berryman, Librarian of the State Law Library of Wisconsin, and to the officials of the State Historical Library of Wisconsin, and of the Congressional Library at Washington, for their kindness in placing freely at my disposal the documents without a study of which this book would have been impossible; also to Mr. Charles N. Gregory, and Mr. David Kinley, of Madison, Wis., for reading parts of my manuscript and making many valuable suggestions.

WILLIAM A. SCOTT.

MADISON, WIS., April 7, 1893.

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CHAPTER I.

THE CONSTITUTIONAL AND LEGAL ASPECTS OF REPUDIATION.

THE study of the chapter of financial history which constitutes the subject of this book, properly begins with an investigation into the rights and privileges of the States of the American Union relative to the payment or non-payment of their debts. We naturally ask at the very outset whether repudiation is in any way connected with the defects in our constitutional and legal system, or whether it has happened in spite of the best possible laws.

The Federal Constitution and the laws of the States themselves are the sources whence an answer to these questions must be derived. We will begin with the former.

As originally adopted, the Constitution of the United States contained two provisions which have

a bearing on this subject. One, in Section 10 of Article I., prohibits a State from passing any law "impairing the obligation of contracts," and the other, in Section 2, Article III., provides that the judicial power of the United States shall extend "to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State or the citizens thereof and foreign States, citizens, or subjects."

The meaning of these two clauses in the present connection at first sight seems clear. The casual reader, uninitiated in the technicalities of the law, would affirm unhesitatingly that the first one made it unlawful for a State to repudiate her just debts, and that the second one provided that in case she did thus incriminate herself, she could be brought to justice before the federal courts. However, a more careful examination of the precise language used in the "contract clause," as the first one is called, reveals several difficulties. In the first place, it does not expressly state whether the contracts referred to are those of private individuals, of States, or of both. The natural inference is that it refers to all contracts by whomsoever made; but the "natural inference" is not always the one which interested parties draw. The next query concerns the meaning of the expression the "obli-

gation of contracts." What is the obligation of a contract? This being explained, we ask in the third place, in what ways can the obligation of a contract be violated? These difficulties must be removed before we can be sure of the precise bearing of the clause in question on the subject under discussion.

Regarding the kinds of contracts referred to, — whether State or individual, or both, — the decisions of the Supreme Court leave no room for doubt. They are unanimous in the declaration that the clause includes cases to which a State is a party. The following are examples of these decisions: In the case of the State of New Jersey *v.* Wilson[1] the statement is made that the contract clause of the Constitution "extends to contracts to which a State is a party as well as to contracts between individuals." In Providence Bank *v.* Billings[2] these words are used: It has "been settled that a contract entered into between a State and an individual is as fully protected by the tenth section of the first article of the Constitution as a contract between two individuals." The decision in the case of Green *v.* Biddle[3] states that "the Constitution of the United States embraces all contracts, executed or executory, whether between individuals, or between a State and individuals; and that a State has no more power to impair an obli-

[1] 7 Cranch. 164, 166. [2] 4 Put. 514, 560. [3] 8 Wheat. 1, 84.

gation into which she herself has entered than she can the contracts of individuals." These and other decisions[1] which might be quoted leave no doubt concerning the constitutional limitation of the right of States to impair contracts into which they have entered.

The meaning of the phrase "obligation of contracts" is settled by the following declarations of the Supreme Court: "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and form a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other."[2] Again it says: "The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced, by which the parties can be obliged to perform it."[3]

These decisions clearly indicate that the value of the contract clause depends upon other laws; namely, those which provide for the enforcement of contracts. If a State owes a debt, her obligation seems to depend entirely upon the laws in existence for the enforcement of contracts against States. If there are no such laws, the contract,

[1] Woodruff *v.* Trapnall, 10 How. 190, 207; and Wolf *v.* New Orleans, 103 U. S. 358, 367.

[2] McCracken *v.* Hayward, 2 How. 608, 612.

[3] Louisiana *v.* New Orleans, 102 U. S. 203, 206.

though legal, is really worthless if the State sees fit to disregard its provisions.

An additional light is thrown upon the meaning and significance of the clause in question by the decisions of the Supreme Court, which define the various methods by which it may be violated. It has been well established by the precedents of this court that a State may change her remedy for enforcing contracts, provided she furnishes in the new as efficient a one as the old.[1] There is surely nothing in the contract clause itself which could prevent this. It simply insists that a change of remedy shall not impair the contract. In actual practice, however, it has been very difficult to draw closely the line between those changes of remedy which impair contracts and those which do not. The Supreme Court has recognized this difficulty, and in the main has succeeded in protecting the right of contracting parties to as efficient a remedy as existed when the contract was made. The following quotation will indicate the practice of the Supreme Court on this point. In the case of Bronson *v.* Kinzie,[2] Chief Justice Taney said: "It is manifest that the obligation of a contract, and the rights of a party under it, may in effect be destroyed by denying a remedy altogether, or may be seriously

[1] Antoni *v.* Greenhow, 107 U. S. 769; Mason *v.* Haile, 12 Wheat. 370; Bronson *v.* Kinzie, 1 How. 311; Van Hoffman *v.* City of Quincy, 4 Wall. 535; Louisiana *v.* Pilsbury, 105 U. S. 278.

[2] See above.

impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing. And no one, we presume, would say that there is any substantial difference between a retrospective law declaring a particular contract or class of contracts to be abrogated and void, and one which took away all remedy to enforce them, or encumbered it with conditions that rendered it useless or impracticable to pursue it. One of the tests that a contract has been impaired is that its value has by legislation been diminished. It is not by the Constitution to be impaired at all. This is not a question of degree or manner or cause, but of encroaching in any respect on its obligation, dispensing with any part of its force."[1]

The intent of the Court to preserve the clause with all its force was well expressed by Justice Strong in Murray *v.* Charleston,[2] when he said: "It is one of the highest duties of this Court to take care that the prohibition (against impairment of contracts) shall neither be invaded nor frittered away. Complete effect must be given to it in all its spirit." In spite of these strong statements, however, in one important case in which a State attempted to evade her obligations by changing the remedy for their enforcement, the Court gave so loose and broad an interpretation to this right

[1] 6 How. 301, 327.
[2] 96 U. S. 432, 438.

that the State was able to accomplish her purpose.[1]

In view of these decisions of the Supreme Court, there can be no doubt concerning the meaning of the clause in question. It certainly refers to the contracts of States as well as to those of individuals, and it lays upon the former a strong moral obligation to pay their just debts. By itself, however, the clause is nothing more than a statement of what ought not to be done. It provides no means of preventing the repudiation of debts, and even when such means are nominally provided by statute, the decision of the Supreme Court to the effect that a remedy may be changed, provided in so doing the contract be not impaired, may give rise to technicalities under cover of which a dishonest State may escape her just obligations.

At this point it becomes necessary to inquire concerning the remedies provided for the enforcement of the contracts of delinquent States. The ability of the defrauded creditor to obtain his rights depends entirely upon these. As we have seen, a State has no legal or moral right to refuse to pay her just debts; but the question of importance is, what can be done in case she does refuse.

The clause — quoted above from the Constitution as originally adopted — seemed to imply that a delinquent State could be brought before the bar of the Supreme Court under such circumstances. This

[1] See Virginia Coupon Cases, chap. 6, p. 186.

would certainly have been a first step towards an efficient remedy. But this interpretation of the clause was questioned even before the Constitution was adopted. A controversy on this very point was carried on in the States when this instrument was being discussed with a view to adoption. It was urged by many that it authorized any citizen of the United States to arraign any of the States except his own at the bar of the Supreme Court. Patrick Henry was a prominent representative of this party, and he said that the expression "controversies between a State and citizens of another State" applied to all controversies, whether the State were plaintiff or defendant. Opposed to him were such statesmen as Madison, Marshall, and Hamilton, who claimed that a State could not be sued without her consent, and that the clause in question applied only to the States as plaintiffs. The question in dispute did not come before the Supreme Court until 1793. In that year Georgia was arraigned by one Chisholm,[1] much to her embarrassment and disgust, and the Supreme Court decided that the case was proper and within its jurisdiction as defined by Section 2, Article III. of the Constitution. In other words, it supported the proposition that an individual could arraign a State before the bar of the Supreme Court.

This decision caused much excitement and discontent throughout the country. The legislature

[1] 2 Dallas, 419.

of Georgia was furious, and at once passed an act condemning to death "without benefit of clergy, any marshal of the United States, or other person, who should presume to serve any process against that State at the suit of an individual;" and when the State of Massachusetts was sued soon after, Governor Hancock convened the legislature, and that body resolved to take no notice of the suit. The substantial result of this decision was agitation for an amendment to the Constitution. The next session of Congress took the matter under consideration, and passed by a large majority what is now known as the eleventh amendment. The State legislatures without exception subsequently confirmed it. It provides that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by the citizens of another State, or by citizens or subjects of any foreign State." In speaking of this amendment in the case of Florida *v.* Georgia[1] Mr. Justice Campbell said: "Various attempts were made in both branches of Congress to limit the operation of the amendment, but without effect. It was accepted, without the alteration of a letter, by a vote of twenty-three to two in the Senate, and eighty-one to nine in the House of Representatives, and received the assent of the State legislatures. Georgia ratified the amendment as an

[1] 17 Howard, 520.

explanatory article, her legislature concurring therewith, deeming the same to be the only just and true construction of the judicial power by which the rights and dignity of the several States can be effectively secured. Thus the supreme constitutional jurisdiction of the United States, the concurrent action of Congress and the State legislatures, expressing a consent almost unanimous, corrected the opinion of the Supreme Court, and intercepted its final judgments in these cases by declaring that the Constitution should not be so construed as to allow them."

This amendment brings us back again to the original question, — What remedy has the holder of a repudiated bond against the State which is his debtor? If he cannot bring suit against her, what possible method remains by which he may enforce his rights? Practically, none. The Supreme Court, however, has made desperate efforts to provide one or more, and these must now be examined, although their real utility is exceedingly small. This court has decided, among other things, that the eleventh amendment applies only to cases brought by individuals against States, and not to cases brought by States against individuals. By virtue of this decision, the federal courts may serve as a shield for the protection of the individual when the State attempts to prosecute him unjustly, but it cannot help him when the State has already done him a wrong, and he seeks redress.

This point was elaborated by Chief Justice Marshall in the case of Cohens *v.* Virginia.[1] In this case the State sued Cohens for negotiating United States lottery tickets on the basis of a Virginia statute which forbade the sale of such tickets in the State. The State courts found him guilty, and fined him. The case was brought before the Supreme Court on a writ of error, and in arguing the writ it was claimed that cases between a State and one of her own citizens were never intended to be cognizable in the federal courts. In reply to this, Chief Justice Marshall said: "This is very true, so far as jurisdiction depends on the character of the parties; and the argument would have great force if urged to prove that this court could not establish the demand of a citizen upon the State; but it is not entitled to the same force when urged to prove that this court cannot inquire whether the Constitution or laws of the United States protect a citizen from prosecution instituted against him by a State." To establish the same point, the case is supposed of an export duty being levied by a State. "If a citizen should pay such a tax," said the Chief Justice, "and then sue the State for the recovery of his money, the federal courts could not protect him. But if he refused to pay the duty, and the State attempted to levy upon his property or entered upon judicial proceedings against him, the courts of the United States could

[1] 6 Wheat. 391.

restrain the State and shield the man from harm." In summing up his argument, Chief Justice Marshall said: "The amendment, therefore, extends to suits commenced or prosecuted by individuals, but not to those brought by States." Justice Matthews in the case of Poindexter *v.* Greenhow [1] concurred in this opinion in the following passage quoted from his decision: "This immunity from suit secured to the States is undoubtedly a part of the Constitution of equal authority with every other, but no greater, and to be construed and applied in harmony with all the provisions of that instrument. That immunity, however, does not exempt the State from the operation of the constitutional provision that no State shall pass any law impairing the obligation of contracts; for it has long been settled that contracts between a State and an individual are as fully protected by the Constitution as contracts between individuals. It is true that no remedy for a breach of its contract by a State by way of damages as compensation, or by means of process to compel its performance, is open, under the Constitution, in the courts of the United States by a direct suit against the State itself on the part of the injured party, being a citizen of another State, or a citizen or subject of a foreign State. But it is equally true that whenever in a controversy between parties to a suit, of which these courts have jurisdiction, the question

[1] 114 U. S. 286.

arises upon the validity of a law by a State impairing the obligation of its contract, the jurisdiction is not thereby ousted, but must be exercised with whatever legal consequences to the rights of the litigants may be the result of the determination."[1]

In view of these decisions it cannot be doubted that States can be brought before the federal courts in suits which they themselves commence, but it is doubtful whether this fact is capable of bringing much consolation to holders of repudiated bonds. Only under exceptional circumstances can they find relief in this fact, for it is seldom that the repudiation of debts by a State compels her to bring suit against persons. Such a case,[2] however, occurred in Virginia. The State had made the coupons of her bonds receivable for taxes and other dues; and, after her repudiation, she refused to receive them, and levied upon the property of those who refused to pay after making a tender of their coupons. This was a case in point; and the Supreme Court declared that a tender of the coupons released the citizen from further obligation, and that the law forbidding the receipt of coupons for taxes was unconstitutional.

[1] See besides, in confirmation of this point, Fletcher *v.* Peck, 6 Cranch. 87; New Jersey *v.* Wilson, 7 Cranch. 164; Green *v.* Biddle, 8 Wheat. 1, 84; Providence Bank *v.* Billings, 4 Pet. 514; Woodruff *v.* Trapnall, 10 How. 190; Wolff *v.* New Orleans, 103 U.S. 358; Jefferson Branch Bank *v.* Skelly, 1 Black, 436.

[2] Poindexter *v.* Greenhow, 114 U. S. 270.

A second source of relief to individuals under certain circumstances is suggested in those passages of the decisions quoted which make it possible for the Supreme Court to decide upon the constitutionality of State laws which may be involved in suits which come under its jurisdiction. If a State law is once declared unconstitutional by the Supreme Court, it no longer possesses binding force, and cannot be referred to by courts in deciding cases, or be pleaded as protection by State officers whose acts may be called in question by injured persons. In the case of Louisiana *v.* Pilsbury,[1] it was held that the legislation of a State impairing the obligation of contracts made under her authority is null and void; and the courts, in enforcing the contracts, will pursue the same course and apply the same remedies as though such invalid legislation had never existed. This applies to laws embodied in State constitutions as well as to statute laws, for the Supreme Court has repeatedly held that the constitution of a State is a law within the meaning of the prohibition that no State shall pass a law impairing the obligation of contracts.[2] This provision, which may be regarded as a part of our constitutional law, has an important bearing

[1] 105 U. S. 278.

[2] See Miss. & Mo. R.R. Co. *v.* McClure, 10 Wall. 511; Mechanics & Traders' Bank *v.* Thomas, 18 How. 384; White *v.* Hart, 13 Wall. 646; Detmas *v.* Merchants' Mut. Ins. Co., 14 Wall. 661; Gunn *v.* Barry, 15 Wall. 610; Davis *v.* Gray, 16 Wall. 203; Fisk *v.* Police Jury, 116 U. S. 131.

on the subject under discussion when considered in connection with the right of individuals to sue State officers in cases in which they could not sue the States directly. This right inheres in precisely those cases in which a State officer attempts to enforce an unconstitutional law. Such a law does not exist, according to the interpretation put upon the Constitution by the Supreme Court; and an officer who attempts to enforce it makes himself liable to the charge of misdemeanor, and may be prosecuted and punished.

It has been claimed [1] that in all cases in which the eleventh amendment prohibits a State from being made a party defendant to a suit, suit may be brought against the officers intrusted with the execution of the law; but it is hardly possible to support this claim with clear evidence drawn from the decisions of the Supreme Court. The cases usually referred to in support of this view do not authorize so broad a generalization. In the leading one, that of Osborn *v.* United States Bank (9 Wheat. 738), suit was brought to restrain the auditor of the State of Ohio from levying a tax upon the United States Bank in pursuance of a statute of the State ordering such a tax to be collected. It was claimed by the defendants that the case could not be entertained by the Supreme Court on account of the prohibition contained in

[1] D. H. Chamberlain on "The Constitutionality of Repudiation," in *North American Review* for March, 1884.

the eleventh amendment. In answer to this the Court said: "The objection is that, as the real party cannot be brought before the Court, a suit cannot be sustained against the agents of that party; and cases have been cited to show that a Court of Chancery will not make a decree unless all those who are substantially interested be made parties to the suit. This is certainly true where it is in the power of the plaintiff to make them parties; but if the person who is the real principal, the person who is the true source of the mischief, by whose power and for whose advantage it is done, be himself above the law, be exempt from all judicial process, it would be subversive of the best established principles to say that the laws could not afford the same remedies against the agent employed in doing the wrong which they would afford against him could his principal be joined in the suit.

In the case of Davis *v.* Gray (16 Wall. 203) this decision was confirmed in the following words:—

"(1) A circuit court of the United States in a proper case in equity may enjoin a State officer from executing a State law in conflict with the Constitution or a statute of the United States, when such execution will violate the rights of the complainant.

"(2) Where the State is concerned, the State should be made a party if it could be done; that it cannot be done is a sufficient reason for the omission to do it, and the court may proceed to decree

against the officers of the State in all respects as if the State were a party to the record."

A second confirmation of this opinion was made in the case of Board of Liquidation *et al. v.* McComb (92 U. S. 531) in the following words: "On this branch of the subject the numerous and well-considered cases heretofore decided by this court leave little to be said. The objections to proceeding against State officers by *mandamus* or injunction are: first, that it is, in effect, proceeding against the State itself; and, secondly, that it interferes with the official discretion vested in the officers. It is conceded that neither of these things can be done. A State, without its consent, cannot be sued by an individual; and a court cannot substitute its own discretion for that of executive officers in matters belonging to the proper jurisdiction of the latter. But it has been well settled that when a plain official duty, requiring no exercise of discretion, is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have a *mandamus* to compel its performance; and when such duty is threatened to be violated by some positive official act, any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it. In such cases the writs of *mandamus* and injunction are somewhat correlative to each other. In either case, if the officer plead the

authority of an unconstitutional law for the non-performance or violation of his duty, it will not prevent the issuing of the writ. An unconstitutional law will be treated by the courts as null and void."

That the Supreme Court did not intend in these cases to lay down the principal that State officers may be made parties defendant to a suit *in all cases* in which the State could not be sued is evident from the decision in the case of Louisiana *v.* Jumel (107 U. S. 711), in which the above-mentioned cases are reviewed, and the following statement subversive of the principle mentioned is made: "The remedy sought, in order to be complete, would require the court to assume all the executive authority of the State, so far as it related to the enforcement of this law, and to supervise the conduct of all persons charged with any official duty in respect to the levy, collection, and disbursement of the tax in question until the bonds, principal and interest, were paid in full, and that, too, in a proceeding in which the State, as a State, was not and could not be made a party. It needs no argument to show that the political power cannot be thus ousted of its jurisdiction, and the judiciary set in its place. When a State submits itself, without reservation, to the jurisdiction of the court in a particular case, that jurisdiction may be used to give full effect to what the State has, by its active submission, allowed to be done; and if the

law permits coercion of the public officers to enforce any judgment that may be rendered, then such coercion may be employed for that purpose. But this is very far from authorizing the court, when a State cannot be sued, to set up its jurisdiction over the officers in charge of the public moneys, so as to control them, as against the political power in their administration of the finances of the State."

It is certainly impossible to draw any sharp line of distinction between State officers executing the laws and the State herself. The officers represent the State, and constitute the State for all practical purposes. But when a given enactment is unconstitutional, it is no more a law than if it had never been passed, and officers must regard it as null and void, any attempt on their part to enforce it falling in the same category as any other official act not warranted by law. This conclusion is the only one which is capable of harmonizing the Supreme Court decisions, and which is supported by reason. The eleventh amendment would be a dead letter if State officials could be sued in the federal courts in all cases in which the State herself would be the natural defendant; but no legal principle is violated if an official be sued for acts which the laws of his State or of the United States did not warrant him in performing.

From this decision it appears, then, that the barriers of the eleventh amendment have been pierced

at only two points: It does not prevent the federal courts from entertaining cases brought by States against individuals, and it does not prevent these courts from pronouncing an opinion concerning the constitutionality of State laws which may be involved in cases which come under their jurisdiction, and from thus restraining State officers from executing unconstitutional laws.

We are now prepared to answer the question suggested at the beginning of this chapter; namely, What protection is afforded the holder of a repudiated bond by the federal constitution? We have seen that the contract clause — which is plainly violated when a State passes a law repudiating a bond — is no protection unless an adequate remedy for its enforcement be provided. We have seen also that Section 2, Article III., of the Constitution was designed to afford such a remedy in its provision that States could be sued by individuals in the federal courts, but that this remedy was practically taken away by the eleventh amendment. Suits between two States may still be brought before the federal courts, and both New York [1] and New Hampshire attempted without avail to make use of these rights for the protection of bondholders who had been defrauded by State repudiation. When Louisiana passed her repudiation acts, both these States obtained possession of certain of the dishonored bonds of their citizens, and brought suit

[1] 108 U. S. 76.

against Louisiana in the Supreme Court. It was decided, however, that this was simply an attempt to evade the eleventh amendment, and consequently not permissible. There is, then, no remedy provided by the United States for the enforcement of the "contract clause" of which the holder of a repudiated bond can avail himself. Only in case the State makes her coupons receivable for taxes, or in some other exceptional way leaves the door open to individuals to enter suit against her, can she be prevented by the United States from repudiating all her debts, and inflicting upon individuals and the community at large all the evils which repudiation involves.

There still remain for us to consider in this chapter the remedies afforded by the States themselves in case of an attempted repudiation. It is, of course, entirely possible for a State to submit herself to those judicial processes to which persons are submitted. Just as a person may be brought before a court and fined, if he refuses to pay his honest debts, so a State may by law provide that she shall be sued by creditors who have grievances, and direct her officers to pay the judgment out of her treasury. The above-mentioned evil effects of the eleventh amendment might be for the most part avoided, if all the States of our Union would provide in this manner for the settlement of claims against themselves. Most bondholders would consider themselves safe, if they could present their

bonds to a court of justice for adjudication regarding their validity, and if they could be assured that the courts were possessed of powers adequate to the enforcement of the collection of a tax for the payment of the bonds in case they were adjudged to be valid. Our States, however, have not as a rule seen fit to confer such powers upon their courts. Most of them have considered it beneath the dignity of a sovereign to stand as defendant in a suit at law. It has been taken for granted that a State will always do right, and that it is tantamount to admitting that the sovereign people are not always to be trusted, to provide for their being forced by a court of justice to do what they would not do voluntarily. Such an admission, it has also been urged, could not but injure the national credit.

From the standpoint of legislation on this subject, our States fall into three classes : those which have entirely ignored the matter ; those whose constitutions provide that the legislature may determine in what manner suit may be brought against the State ; and those which expressly prohibit the State being made a defendant in a suit at law.

In constitutions of the first class are usually found simply restatements of the prohibition contained in the federal constitution against the impairment of contracts. This, of course, amounts to nothing as a protection to persons seeking their rights. To the second class, thirteen of our States

belong.[1] Of these, however, only five — Indiana, Mississippi, Wisconsin, Nebraska, and Nevada — have anything approaching adequate legislation on the subject. The statutes of Indiana provide that suit against the State may be brought in the Superior Court of Marion County, and appealed by either party to the Supreme Court. The value of this privilege is, however, considerably diminished by the provision that "whenever by final decree or judgment of said superior court of Marion County, Ind., or the Supreme Court, a sum of money is adjudged to be due any person from the State of Indiana, no execution shall issue thereon, but said judgment shall draw interest at the rate of six per cent per annum from the date of the adjournment of the next ensuing session of the General Assembly until an appropriation shall have been made by law for the payment of the same, and said judgment paid." [2] The statute of Mississippi resembles this, particularly in the provision that no judgment shall be paid until an appropriation shall have been made by the legislature,[3] and the

[1] See Pennsylvania Constitution, Art. I. Sec. 11; Indiana C., IV. 24; Wisconsin C., IV. 27; Nebraska C., VI. 22; Delaware C., I. 9; Kentucky C., VIII. 6; Tennessee C., I. 17; California C., XX. 6; Oregon C., IV. 24; Nevada C., IV. 22; South Carolina C., XIV. 4; Mississippi C., IV. 21; Florida C., IV. 19.

[2] Revised Statutes of Indiana (1892), vol. iii. pp. 103, 104. One section expressly exempts from the operation of the statute the stock issued in aid of the Wabash and Erie Canal.

[3] See Annotated Code of Mississippi, 1892 (Thompson, Dillard, & Campbell), chap. 131.

experience of that State has demonstrated that to leave the matter of paying a judgment to the discretion of the legislature is fatal to the interests of defrauded bondholders.[1]

The legislature of Wisconsin has made a similar provision for the bringing of suits against that State. Here, however, the proceedings come in the first instance before the Supreme Court, questions of fact, however, being determined by some circuit court. This State, however, makes the decision of her Supreme Court final and binding by the following provision: "Whenever a final judgment against the State shall be obtained in the Supreme Court, it shall be the duty of the clerk of the said court to make and furnish to the Secretary of State a transcript of such judgment, and the Secretary of State shall, thereupon, audit, in favor of the person so obtaining such judgment, the amount of damages and costs therein awarded, and shall draw his warrant on the treasury therefor. There is hereby appropriated from the State treasury out of any money therein, not otherwise appropriated, a sum sufficient to carry into effect the provision of this act" (Statutes of Wisconsin, 1871, vol. ii. pp. 1789–1791). This statute would be all that could be asked in behalf of State creditors, were it not for the following clause appended to a section of the statute which prescribes the *modus operandi* of

[1] See chap. ii.

bringing suit against the State: "*Provided always*, that no judgment rendered in any such action shall be evidence of any public debt against the State, nor shall the State be held liable to pay any such judgment, or any part thereof, or for any costs which may accrue in the prosecution thereof." Provisions in all essentials like those of Wisconsin (the last one quoted being accepted) have been made by the legislature of Nebraska.[1]

The legislature of Nevada has complied with the provision of her constitution only to the extent of allowing the State to be sued on "a claim . . . for services or advances authorized by law, and for which an appropriation has been made, but of which the amount has not been fixed by law." If the Board of Examiners, or the State Comptroller, refuse to allow a portion of such claims, suit can be brought against the State to recover the portion thus disallowed.[2]

The legislatures of other States whose constitutions express a willingness to allow the State to be sued, with one exception, have let the matter go by default; and silence of the statutes on this point has been interpreted to mean that the State cannot be made defendant in a suit at law.[3]

The exception referred to is that of the legisla-

[1] See Consolidated Statutes of Nebraska (1891), Sec. 4307–4323.

[2] See General Statutes of Nevada, 1885 (Bailey & Hammond), Sec. 3895.

[3] See People *v.* Talmage, 6 Cal. 258.

ture of Tennessee, which, instead of providing how suits can be brought against the State, has declared that no such suits shall be allowed under any circumstances. Section 3507 of the code of 1884 (Millikin & Vertrees) reads as follows: "No court in the State of Tennessee has, nor shall hereafter have, any power, jurisdiction, or authority to entertain any suit against the State, or against any officer of the State, acting by authority of the State, with a view to reach the State, its treasury, funds or property; and all such suits now pending, or hereafter brought, shall be dismissed as to the State or such officers on motion, plea, or demurrer of the law officer of the State or counsel employed by the State."

Arkansas, Alabama, Illinois, Virginia, and West Virginia belong to the third class above mentioned. They do not allow themselves to be sued. The constitution of Arkansas, Sec. 20, Art. V., reads as follows: "The State of Arkansas shall never be made defendant in any of her courts." That of West Virginia, Art. VI. Sec. 35, says: "The State of West Virginia shall never be made defendant in any court of law or equity." The provisions in the constitutions of the other States are in every essential respect similar to these.

North Carolina and Michigan are exceptional cases in that they do not properly belong to either of the three classes mentioned. The constitution of the former State, Art. IV. Sec. 11,[1] provides for

[1] Constitution of 1868.

the settlement of claims by the Supreme Court, but adds that "its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the General Assembly for its action." In the constitution of Michigan there is a provision that the Secretary of State, Treasurer, and Commissioner of Lands shall constitute a board for the adjustment of claims against the State.[1] Such a provision, however, is of little value unless enforced by stringent legislation giving this board power not only to adjust the claims, but also to draw upon the treasury for their payment. It may also be doubted whether this provision would cover the case of the holder of a repudiated bond.

Other facts or arguments are not necessary to our present purpose. A brief examination of the constitutional or statute law of our States is adequate to show that, with possibly four or five exceptions, they have not provided for the protection of defrauded creditors. Abundance of facts given in the following chapters place this conclusion beyond all controversy.

In conclusion, then, we may summarize that portion of our public law which relates to the repudiation of debts as follows: —

1. States are forbidden by the Constitution of the United States, and in many cases by their own

[1] Art. viii. Sec. 4.

constitutions, to violate contracts into which they have entered.

2. The United States Constitution as originally adopted permitted individuals to bring suit in the federal courts against States guilty of having violated their contracts, and in so far afforded them a remedy; but the eleventh amendment deprived persons of this privilege, and virtually took away this remedy. At the present time the federal government can afford relief to a defrauded State creditor only indirectly and under special circumstances. The Supreme Court still claims the right to entertain suits brought by States against persons, and it still persists in the right to decide concerning the constitutionality of State laws which are involved in cases coming within its jurisdiction. It can, therefore, protect a person against whom a State is attempting to enforce an unconstitutional law, and it can protect a person in his right to bring suit against State officials who attempt to enforce unconstitutional laws.

3. Our States, with four or five exceptions, have failed to provide remedies against themselves in cases of repudiation.

4. The general conclusion is that our States are practically free to pay their debts or to repudiate them as they see fit.

The following chapters will indicate the use which they have made of this freedom.

II.

REPUDIATION IN MISSISSIPPI, FLORIDA, AND ALABAMA.

CHAPTER II.

REPUDIATION IN MISSISSIPPI, FLORIDA, AND ALABAMA.

Mississippi.

Of the States considered in this sketch, Mississippi was the first to practise repudiation. As early as the forties she refused to pay one class of bonds aggregating in face value $5,000,000, and in the fifties another class aggregating $2,000,000 met a like fate.

The first mentioned bonds were issued in June, 1838, in payment of five thousand shares of stock in the Union Bank of Mississippi. This bank was chartered on the 5th of February, 1838, under a law which pledged the State to the issue of bonds to the amount of $15,500,000, for the purpose of supplying the working capital. Several conditions were attached to this issue, among which the most important are the following: (1) that subscription books for the whole amount ($15,500,000) should be opened; (2) that only real estate owners in the State of Mississippi should be permitted to subscribe; (3) that said subscribers should give first-class mortgage securities, which were to be turned over by the bank officials to the State as

security for the bonds; (4) that the bonds should not be sold below par.[1] The validity of the charter which prescribed these conditions rested upon the compliance of the legislature with the following provisions of the constitution designed to prevent hasty and unpopular legislation: "No law shall ever be passed to raise a loan of money on the credit of the State, or to pledge the faith of the State for the payment or redemption of any loan or debt, unless such law be proposed in the Senate or House of Representatives, and be agreed to by a majority of the members of each house, and entered on their journals with the yeas and nays taken thereon, and be referred to the next succeeding legislature, and published three months previous to the next regular election in three newspapers of the State; and unless a majority of each branch of the legislature so elected, after such election, shall agree to and pass such law." [2]

Ten days after this enactment a bill was passed entitled "An act supplementary to an act to incorporate the subscribers to the Mississippi Union Bank," which contained the following provision: "As soon as the books of subscription for stock in the said Mississippi Union Bank are opened, the Governor of this State is hereby authorized and required to subscribe for, in behalf of this State, fifty thousand shares of the stock of the original

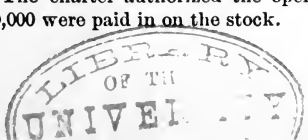
[1] For the charter, see Laws of Mississippi for 1838, p. 9.
[2] See Art. VII. Sec. 9 of the constitution of 1838.

capital of the said bank; the same to be paid for out of the proceeds of the State bonds, to be executed to the said bank as already provided for in the said charter."[1] Under this supplemental act, bonds to the amount of $5,000,000 were executed to the bank in purchase of stock. They were sold to Mr. Nicholas Biddle, an agent of the United States Bank, and were paid for, at the rate of 4*s.* 6*d.* per dollar, in five equal instalments on the first day of November, 1838, and on the first days of January, March, May, and July, 1839. Of these bonds 1,543 were afterwards deposited by the Bank of the United States as security for loans to it in Europe, and some of them fell into the hands of Hope & Co. of Amsterdam.

With the proceeds of this sale the bank commenced business.[2] Circumstances were unfavorable to it from the beginning. President Jackson's specie circular and the war on the United States Bank had already brought the people of the State into financial straits. There was need of more money; and the proper way to obtain it, according to the notions of the time, was to charter new banks. Demands for charters, therefore, came to the legislature thick and fast, and for a time they were granted without hesitation, as the following table shows: —

[1] For the supplemental act, see Laws of Mississippi for 1838, p. 33; also Appendix III.

[2] The charter authorized the opening of the bank as soon as $500,000 were paid in on the stock.



Bank capital authorized in			1833 . .	$ 6,000,000 [1]
"	"	"	" 1836 . .	21,000,000
"	"	"	" 1837 . .	10,300,000
"	"	"	" 1838 . .	15,500,000

No one at first seemed to appreciate the danger of this policy, notwithstanding the fact that numerous bank failures in New England, New York, and the greater part of the South and West pointed clearly to it. The Governor, however, did finally conclude that the State was suffering from an overissue of bank notes, and vetoed thereafter the charters granted by the legislature. Unfortunately, he began to veto *just after* he had approved the charter for the Union Bank and the act supplemental to it.[2]

Having thus commenced its existence under the most unfavorable circumstances, the bank should have been managed with great discretion and conservatism. But, on the contrary, its capital was loaned to insolvent individuals and corporations, and its management resembled that of a gambling concern.[3] In less than two years after the granting of its charter it was hopelessly insolvent.[4]

In January, 1841, the Governor communicated to the legislature the facts concerning the bank's

[1] *Bankers' Magazine*, Nov. 1849, p. 341.

[2] See "Nine Years of Democratic Rule in Mississippi," p. 19.

[3] See "The Origin of Repudiation," *Bankers' Magazine*, December, 1846.

[4] "Report of Bank Commission to the legislature of the State of Mississippi, declared Jan. 4, 1840.

condition, and recommended that it be placed in liquidation, and that the five millions of bonds negotiated in 1838 be repudiated. He claimed that these bonds were illegal, and that fraud had been perpetrated in their issue.[1] In a letter to Hope & Co. of Amsterdam, who demanded payment of overdue interest, he again insisted upon repudiation.[2] The legislature of 1841 protested in vigorous terms against this recommendation, but the people showed their approval by sending to the capital in 1842 a legislature which denied that the State was under legal or moral obligations to pay the bonds in question.

The chief argument used by the repudiationists was the unconstitutionality of the supplemental act under which these bonds were issued.[3] This act, it was claimed, was something more than an amendment to the original charter, and, according to the constitutional provision already quoted, should have received the sanction of two legislatures. The argument was based upon the fact that the supplemental act ordered the sale of bonds in *payment of stock* in the Union Bank, while the original act, which was passed in a con-

[1] See article on "The Origin of Repudiation" in the *Bankers' Magazine* for December, 1846.

[2] The letter mentioned is quoted in the *Bankers' Magazine* for November, 1849, in an article entitled "Repudiation."

[3] For an able presentation of this argument, see Jefferson Davis's letter in reply to an attack of the *London Times*, quoted in the *Bankers' Magazine* for November, 1849, p. 363.

stitutional manner, authorized no such purchase, but simply the issue of bonds under certain definite conditions, none of which had been complied with in the issue of the five millions.

Another illegal proceeding was the sale of the bonds on credit, whereas the original act forbade a sale below par. It was claimed that a sale on credit practically amounted to a sale below par, interest being paid on the whole amount from the beginning. It was further claimed that the State suffered loss from the change in the stipulations from dollars and cents to pounds, shillings, and pence.

Honest differences of opinion have been expressed concerning the validity of these arguments, and especially concerning the alleged unconstitutionality of the supplemental act. That the representatives of the people, however, then and for a long time after, saw nothing wrong in this act and the operations of the Governor and bank officers in the negotiation of the bonds is evident from the following facts. The first legislature which met after the sale of the bonds passed the following resolution: "Resolved that the sale of the bonds was highly advantageous to the State and the bank, and, in accordance with the injunctions of the charter, . . . bringing timely aid to an embarrassed community." The next legislature (1840) uttered no protest against the bonds, though it legislated concerning the bank. The acquiescence

of two successive legislative bodies should — in equity, at least, if not in law — be interpreted as giving validity to the act under which the bonds were issued, as well as to the manner of their issue.

This view of the case certainly becomes tenable when we review the decisions of Mississippi's own courts. The State Constitution at the time of the issue of these bonds permitted suit to be brought against the State in the Court of the Chancellor, and, on appeal, in the High Court of Errors or Appeals. The holders of repudiated bonds availed themselves of this constitutional privilege, and both courts decided that the State was legally and morally bound for the payment of the bonds.

In the case of Campbell *v.* Mississippi Union Bank (6 H. 625) the court made the following statement concerning the supplemental act claimed to be unconstitutional: "The supplemental act makes no alteration whatever in regard to this section (Sec. 5 of the original act which pledged the faith of the State). It changes in some respects the mere detail of the original charter in the mode of carrying the corporation into successful operation, and authorizes the Governor to subscribe for the stock on the part of the State. The object of this pledge is not changed; on the contrary, the supplemental act was passed in aid of the original design. In applying the constitutional test to the fifth section, I am not able to

perceive any reason which to me seems sufficient to justify that it is unconstitutional."

In the case of the State of Mississippi *v.* Johnson (3 C., p. 755) the court says: "From the view we take of the questions connected with this branch of the subject, we are compelled to hold that the supplemental act was not void in consequence of not having been passed in conformity with the direction contained in the ninth section of the seventh article of the constitution."

Further on (p. 762) in the same decision the statement is made: "Having examined the several grounds on which it was alleged that the supplemental act was void, we have come to the conclusion that it was not void, but hold it to be a valid legislative enactment."

Regarding the claim that the bonds were sold for less than their par value and hence were unconstitutional, the court said: "We are of opinion that it does not appear from the facts of the case that the bonds were sold for less than their par value; consequently that the sale was neither illegal nor void" (p. 769).

Before recording the last act in this repudiation drama, it will be well to trace the history of the other repudiated bonds to which reference was made above. They were the so-called Planters' Bank bonds. This institution was chartered by the State in 1830 with an authorized capital of $3,000,000, of which $2,000,000 were reserved for

the State. Bonds to the amount of $500,000 were accordingly issued in July, 1831, and the remaining $1,500,000 in March, 1832. These bonds were sold in the Philadelphia market at a price which yielded the State a premium of about $250,000.[1] This sum was set aside as a sinking fund, into which it was decided to turn the proceeds of the State's share of the bank dividends.

The bank flourished well up to 1839. In the mean time it had established branches in several cities of the State; had issued a large circulation and received large deposits; and, during a portion of the period, had paid ten per cent dividends. The sinking fund in 1839 had grown to $800,000. In this year, however, fortune changed. The period of the bank's prosperity coincided with the period of inflation which has been described, and when the bubble of bank credit burst throughout the State, it found itself unable to meet its obligations. Unable to pay interest on the bonds, the State was called upon to meet the deficiency. This, however, she failed to do. No one at this time seriously proposed the repudiation of the bonds, but the State was delinquent in letting the interest go by default. The sinking fund, on account of bad investments, shrunk rapidly, amounting in 1840 to $525,765 and in 1848 to no more than $100,000.

[1] See article on "Banking and Repudiation in Mississippi" in *Bankers' Magazine* for August, 1863.

In the legislative session of 1848–49 the subject of the Planters' Bank bonds and the overdue interest on them was agitated. The sentiment in favor of paying them and the interest due so far as possible prevailed, and a law was passed authorizing the application of the sinking fund to this latter purpose. There was developed, however, considerable opposition to this measure, and a desire to repudiate the bonds manifested itself on all sides. The State Treasurer refused to pay the coupons on certain bonds which were presented, on the ground that those coupons were first to be paid which were cut from the oldest bonds, or, rather, that the interest must be paid on the oldest bonds first. A suit was brought for a *mandamus* compelling him to make the payment, and thus an opportunity was given the court to decide the question concerning the validity of these bonds. It is a noticeable fact that no one connected with this suit so much as suggested that these bonds were in any respect invalid. It was taken for granted that they were legal and constitutional, and that they ought to be paid.[1]

As in the case of the Union Bank bonds, so here the opinion of the courts seemed to have very little weight. The mania of repudiation seemed to have infected the whole people. They only thought of ridding themselves of a burden, and did not consider the equities of the case. At the election of

[1] See Wilson *v.* Griffith, 2 C., p. 468.

1852 the question was submitted to popular vote whether a tax should be levied to pay the interest on the Planters' Bank bonds, and a majority of 4,000 against the levy of such a tax was returned. This vote undoubtedly meant that the people were in favor of the repudiation of these bonds, and willing legislatures so interpreted it.

The fate of both these and the Union Bank bonds was sealed by the constitution adopted in 1875, which contained the following clause: "Nor shall the State assume, redeem, secure, or pay any indebtedness claimed to be due by the State of Mississippi to any person, association, or corporation whatsoever, claiming the same as owners, holders, or assignees of any bond or bonds known as the Union Bank bonds or the Planters' Bank bonds." Since that time the State has paid no heed to the cries of her numerous creditors, or to the reproaches of her sister States, or to Wall Street's opinion of her credit.

Florida.

Florida, unlike her sister States in the South, has had two attacks of the disease of repudiation. During the first one she disposed of $3,900,000 of bonds issued or indorsed for banks, and during the second of $4,000,000 of railroad aid bonds.

The story of the bank bonds is long and interesting, but for present purposes it may be briefly

told. In 1833 the territory chartered the Union Bank of Florida with an authorized capital of $3,000,000, which sum was raised, as authorized by the charter, by a sale of territorial bonds. Lands and slaves of stockholders were hypothecated to the territory as security. The charter prescribed that the bonds must not be sold below par; that the property to be hypothecated as security should be appraised according to certain regulations; and that a portion of the profits of the bank should accrue to the territory in consideration of the aid received.[1] The stockholders were not obliged to pay any part of the amount they subscribed, but simply to secure their subscription by bonds or mortgages. The bonds were sold mostly in Europe in 1834, 1838, and 1839, and at a "nominal" discount of from three to ten per cent.[2] The directors of the bank interpreted the charter to mean that the bonds must not be sold below par *in the funds of Florida*, hence eight or ten per cent discount in London amounted to a considerable premium according to their notion, and the discount was "nominal" rather than real.

The bank began business on the 16th of January, 1835. Most of its stock was owned by a comparatively few persons, to whom was loaned

[1] See Laws of Florida for 1833.

[2] See letter of the bank president to the Chairman of the Committee on Banks appointed in 1840. — Ex. Doc. No. 111, 2d Session of Twenty-sixth Congress, vol. iv. p. 298.

the greater part of its capital. The security was the stock held, which, however, had not been paid for, but which was secured by lands and slaves, purchased with the proceeds of the loans.[1] The interest on the bonds sold in 1834 was paid by the negotiation of new bonds, and the bank was able to continue this process until all the bonds authorized to be issued had been disposed of. The bank was also guilty of overtrading and of issuing an excessive amount of circulating notes.

May 10, 1837, the bank suspended specie payments, and grave fears concerning its solvency were felt. It was unable to resume payment of specie in 1839 and 1840, when most solvent banks of other States resumed, and, indeed, it never again became a specie-paying bank. In 1842 it failed to pay the interest on the bonds loaned it, and the question of the territory's liability — which had been under discussion for two or three years at least — became a live issue.

In 1840 the Judiciary Committee of the territorial legislature, to which was referred the question of the right of the territory to pledge the faith of the people in aid of corporations, expressed an adverse opinion in the following resolutions: —

1. *Resolved*, That the power of the Governor and Legislative Council of the Territory of Flor-

[1] See Report of Commission on Banks appointed by territorial legislature of 1840. — Ex. Doc. No. 111, 2d Session of Twenty-sixth Congress p. 278.

ida, delegated by Congress over "all rightful subjects of legislation," under that clause in the Constitution which invests Congress with authority "to make all needful rules and regulations respecting the territory and other property belonging to the United States," does not extend to the creation of banks with exclusive privileges and franchises, nor to the issuing of bonds and guarantees in aid of such institutions, pledging the faith and credit of the people of Florida.

2. *Resolved*, That such pledge of the faith and credit of the people of Florida is null and void.[1]

Though the opinions of eminent lawyers[2] were diametrically opposed to the sentiment expressed in these resolutions, subsequent governors[3] of the Territory encouraged the people in the welcome belief that the bonds issued in aid of banks were null and void on account of their illegality. At the time the Union Bank defaulted, and subsequently Governor Call[4] — who was an exception to the rule — opposed the plan of repudiation, but claimed that the Territory was not liable until all the resources of the bank were exhausted. Unfortunately, the people as represented in the Legis-

[1] Ex. Doc. 2d Session of Twentieth Congress, vol. iv. p. 269.

[2] See in the above-mentioned document the opinions of James Kent, Horace Binney, Peter A. Jay, and Daniel Webster.

[3] See message of Governor Branch dated Jan. 10, 1845, and the message of Governor Reid dated Jan. 11, 1846. — Ex. Doc. 1st Session Twenty-ninth Congress, pp. 685 and 779 respectively.

[4] See quotations from his message contained in the above-mentioned document.

lative Council did not agree with him when the time came for the Territory to shoulder her obligations, and the outcome was that Florida entered the Union as a State adhering to the doctrine that her new form of political life released her from these obligations.

This statement applies to the other obligations of the Territory in behalf of banks, amounting in all to $900,000, as well as to the bonds of the Union Bank, and it is only necessary to state briefly the nature of these obligations.

The Bank of Pensacola was chartered in 1831 with an authorized capital of $200,000, and began business Nov. 28, 1833. Early in 1835 it was authorized by act of the Legislative Council to increase its capital to $2,500,000, and to purchase stock in the Alabama, Florida, and Georgia Railroad. To aid in this purchase the bank was further authorized to issue its bonds to the amount of $500,000, and the Governor was authorized to indorse them in behalf of the Territory. The bank executed the provisions of this act, and the bonds were duly issued and indorsed, and the railroad stock purchased. The Territory received as security a mortgage on the capital stock of the bank, including the railroad shares.

The life of this institution was very short. By 1843 it had passed out of existence. The causes of its early demise were many; but chief among them was the investment of too much money in

the Alabama, Florida, and Georgia Railroad. This road failed, and the mortgage held by the Territory proved worthless. The only alternative left being repudiation or payment of the bonds by taxation, the former was adopted for the reasons mentioned above.

The Southern Life Insurance and Trust Company was incorporated Feb. 14, 1835. Its charter granted, among other powers, the right to insure life; to receive moneys in trust at such rates of interest as could be obtained, not exceeding eight per cent per annum; and to buy, discount, and sell drafts, promissory notes, and bills of exchange. Its capital stock was fixed at $2,000,000, with the privilege of increasing it to $4,000,000. The company was authorized to issue bills or notes, other than drafts or bills of exchange, to the amount of capital actually paid in, and, *in addition*, certificates of one thousand dollars each, bearing not more than six per cent interest, for the payment of which the faith of the Territory was to be pledged by the indorsement of the Governor. As security the charter provided: "That in case the said company shall make defaults in payment of the principal or interest of such certificates, it shall be the duty of the Court of Appeals of said Territory, on being certified of the fact by the Governor, to issue an appropriate process to the marshal, commanding him to take so much of the money, choses in action, or other effects or property of said

company, and bring the same into court forthwith as will be sufficient to indemnify the government from loss by reason of such default, and the court is hereby empowered to direct the sale of the same."[1]

The company commenced operations in the same year that it was chartered, before the act of incorporation had been approved by Congress. The Senate Committee on Finance, of which Daniel Webster was chairman, made a report[2] in June, 1836, which strongly disapproved the act, but recommended the amendment of the charter in view of the fact that the company had already commenced operations. Amendments were made in February, 1837, and February, 1838, but they increased rather than limited the powers already granted.

The certificates issued and guaranteed aggregated $400,000 at the time the Territory was called upon to meet the obligations incurred in behalf of this company. The property she was authorized to seize and sell had no existence, and she would of necessity have lost the face value of the certificates had she not taken refuge behind the claim that as a State she was not responsible for the debts contracted in behalf of banks and other corporations during her Territorial life.

[1] Ex. Doc. No. 226, 1st Session Twenty-ninth Congress, vol. viii. p. 746.

[2] Sen. Doc. No. 409, 1st Session Twenty-fourth Congress, vol. vi.

The reasons assigned for the repudiation of the obligations already described are entirely fanciful, and furnish grounds for the claim that the Territorial authorities were hard pressed to assign a rational cause for their action. A very real and much better reason for repudiation could have been assigned, and indeed was given by the representatives of the Territory, in their debates upon the question in the session of 1841. About 1840 the population of Florida was estimated at about fifty thousand souls. Hence the debt which the failure of these banks brought upon her amounted to over fifty dollars per capita, and the further issues which were demanded by the acts chartering the banks would have brought the debt to about two hundred dollars per capita.[1] There was very little wealth in the Territory at the time, and it would have been impossible to pay the interest on such a debt and to meet the current expenses of the Territorial government. It is difficult to see, therefore, how the holders of these bonds could have obtained either principal or interest. It is possible that in more prosperous days the State might have paid her old debts; but, in the light of her subsequent financial history, we must acknowledge that this possibility was very remote.

The constitution under which Florida entered the Union as a State made it "the duty of the General Assembly as soon as practicable to ascer-

[1] See Tenth Census, vol. vii. p. 587.

tain by law proper objects of improvement in relation to roads, canals, and navigable streams, and to provide for a suitable application of such funds as may be appropriated for such improvements."[1] In order to carry out what were understood to be the provisions of this clause, an act was passed in January, 1855, providing for the encouragement of a liberal system of internal improvements, and authorizing the issue of State bonds to the amount of $10,000 per mile in aid of railroads. The act provided that such bonds should constitute a first mortgage lien on the roads, their equipments and franchises. It was subsequently amended so as to permit the issue of bonds to the amount of $16,000 per mile, and to permit the Governor, in case a company defaulted in the payment of either principal or interest, or any part thereof, after twelve months to enter upon and take possession of the road and its franchises, and to sell them at public auction. Under authority of these acts bonds to the amount of $4,000,000 were issued in aid of the Jacksonville, Pensacola, and Mobile Railroad and the Florida Central, bonds of these roads of an equal amount being taken in exchange.

Early in the seventies these roads defaulted in their interest payments, and the State was called upon to make good the deficiency. This she was utterly unable to do. Her income had been for

[1] Art. XI. Sec. 2.

many years considerably less than her expenses.[1] From 1846 to 1856 her finance reports show an average annual deficit of about nine thousand dollars. Bonds were issued from time to time for the purpose of retiring her floating debt, and the accumulating interest on these made the deficits larger after the war. The financial report for the year ending Dec. 31, 1873, states that the total receipts for that year were $257,233.54, while the warrants issued during the same period amounted to $304,214.35. A floating debt amounting to $224,827.67 existed at the same time.[2]

As authorized by law, the State took possession of the defaulting roads, but was prevented for a long time from selling them by litigation in the courts. The case of the State was complicated by the fact that the Western North Carolina Railroad

[1] The following table, taken from the Tenth Census, vol. vii. p. 588, shows the amount of the deficit for the years named : —

1846,	revenue collected,		$27,597.28,	warrants issued,		$56,009.57
1847	"	"	45,357.60	"	"	52,787.46
1848	"	"	56,832.72	"	"	54,913.81
1849	"	"	58,638.11	"	"	55,807.79
1850	"	"	46,079.84	"	"	38,559.33
1851	"	"	57,141.10	"	"	67,187.73
1852	"	"	55,619.63	"	"	55,234.49
1853	"	"	57,278.36	"	"	108,607.88
1854	"	"	62,801.51	"	"	53,417.13
1855	"	"	68,365.19	"	"	85,365.19
			$535,711.34			$627,890.58

[2] See Financial Chronicle for Feb. 8, 1873.

had acquired a first mortgage lien on the Florida Central, and naturally objected to its being sold for the benefit of the State. During the progress of this litigation, cases were brought before the courts involving the validity of the railroad aid bonds, and the State was relieved of her anxiety and care in the matter by a decision to the effect that the bonds were unconstitutional.

The court claimed that the constitution did not authorize the exchange of the bonds of the State for those of railroad companies, but simply the issue of bonds for the construction of public works which should be her own property. The following are the words of the court in the case of Holland *v.* the State of Florida and others: "Where in the constitution can authority be found that will authorize the State bonds to be issued to be exchanged for railroad bonds? This *swapping* of State obligations for railroad paper at the will of the legislature, *ad libitum*, is certainly a new idea begotten by those who believe that the legislature is the dispenser of all power, and that it only requires a sufficient number of legislative votes to do anything. But this court will guard the constitution from such pernicious construction." [1]

After the rendition of this decision the State no longer troubled herself about the railroad aid bonds, and subsequently omitted to mention them as among her liabilities.

[1] 15 Florida, 491.

Adding the $4,000,000 of bonds with accrued interest thus disposed of to the $3,900,000 of bank bonds before mentioned, makes the aggregate of Florida's repudiation amount to something over eight million dollars.

Alabama.

The first constitution of Alabama, adopted July 5, 1819, authorized the establishment of a State bank with as many branches as the legislature might deem proper. It also provided that at least two-fifths of the stock in these banks should be reserved for the State, and prescribed a number of other rules to which the banks were to be subject. Under the authority granted in this article of the constitution, the legislature established a central bank with several branches, and laid the foundation of the State debt. In pursuance of a series of acts dating from 1823 to 1826 the State became possessed of bank stock to the amount of $8,000,000. A portion of this went to the State school fund and to the trustees of the University of Alabama as compensation for the lands granted to these respectively by the federal government.

These banks prospered greatly during their early history. The greater part of the expenses of the State was paid by the earnings of her stock, most of her direct taxes being abolished in 1836. But during the financial convulsion of 1837 they became

involved in financial difficulties, and suspended specie payments. A special session of the legislature was called to afford relief, and, among other measures, an act was passed making the bills of the bank receivable for dues of the State. Prosperity did not come with these measures of relief, however, but, instead, the condition of the banks became worse with each year, until in 1842 they were placed in liquidation. The State was responsible for their bills and most of their obligations, and the settlement left her with a considerable debt, the interest and principal of which, however, she proved herself entirely able to pay by resorting to heavy taxation. She met her interest charge regularly each year before the war, and paid principal enough to reduce the debt in 1861 to $3,445,000.[1] During the war she paid that portion of the interest which was due on the bonds held in London, but paid no interest in New York after January, 1861.[2]

When the war closed the State, of course, was in a prostrate condition, financially as well as otherwise exhausted by the struggle through which she had passed, and, owing to defective revenue laws, her ordinary sources of income produced very little. In 1866 her receipts were only $62,967.80, while her necessary disbursements were $606,494.39.

[1] See Tenth Census, vol. vii. p. 592.

[2] Of the total debt of $3,445,000, $1,336,000 were held in London, and $2,109,000 in New York. Interest on the London portion was paid regularly up to January, 1865.

In 1867 her income increased to $691,048.86, and her disbursements to $819,434.85. In 1868 and, indeed, in nearly every subsequent year until 1876, there was a large balance against her.[1]

In order to meet necessary expenses, the legislature of 1865 passed an act[2] on Dec. 15 which authorized the issue of bonds to the amount of $1,500,000 to mature in twenty years, and to bear interest at eight per cent if they were dollar bonds, and at six per cent if they were sterling bonds. A sufficient amount of these was issued before November, 1866, to bring the debt, exclusive of the educational and university funds, up to $4,550,062.22.[3] Other bonds and certificates of indebtedness were subsequently issued to meet the deficits, thus bringing this portion of the State debt, exclusive of the educational and university fund, to $5,382,800 on Sept. 30, 1870, and to $6,543,800 on Sept. 30, 1871.[4] It was increased still more under authority of acts passed Dec. 31, 1872, Feb. 25, 1873, and Dec. 19, 1873.

The most troublesome portion of the debt of this State was founded by an act[5] passed Feb. 19, 1867, which authorized the indorsement of railroad

[1] See Financial Chronicle for March 11, 1871.

[2] See Laws of Alabama for 1865, p. 40.

[3] Tenth Census, vol. vii. p. 592.

[4] See the State Auditor's Report for the year ending Sept. 30, 1871; also the Financial Chronicle for Nov. 30, 1867, and March 11, 1871.

[5] See Laws of Alabama, 1866-67 p. 686.

bonds to the amount of $12,000 per mile. One clause, providing that this indorsement be made for each section of twenty miles of completed road, was amended by an act[1] passed Aug. 7, 1868, which permitted the indorsement to be made for each five miles finished after twenty miles had been constructed, and the indorsement to be raised to $16,000 per mile. As security for this indorsement, the State was to be given a first mortgage on the roads; and by an act[2] approved Feb. 21, 1870, the Governor was authorized to take possession of any road in case it defaulted in payment of interest, and to sell it for the benefit of the State, if its earnings were not sufficient to pay the accruing interest. The same act also states that in case of a default in the payment of interest by any road, "the Auditor of the State is authorized, and it is made his duty, upon his warrant, to draw from the treasury any sum of money necessary to pay the interest on any of the bonds indorsed by the State, whenever said interest is not provided for by the company; and to pay such interest when due as provided for in this act; and, in case the exigency requires, the Governor is hereby authorized and directed to negotiate temporary loans for such purpose, and pledge the faith of the State for the payment of the same, so that the interest upon all the indorsed bonds of the State shall be promptly paid when due."

[1] See Laws of Alabama, 1868, p. 198.
[2] *Ibid.*, 1870, p. 149.

The railroad companies of the State speedily took advantage of these acts. Up to Nov. 15, 1869, $2,600,000 of railroad bonds had been indorsed; by Sept. 30, 1870, $8,480,000;[1] and by Sept. 30, 1873, $18,686,000. In addition to this, $2,000,000 of eight per cent State bonds were issued to the Alabama and Chattanooga Railroad under authority of an act[2] passed Feb. 11, 1870, and later $300,000 of State bonds were issued to the Montgomery and Eufaula Railroad Company. Of all in the State, the former company was the most liberally aided, having had over $5,000,000 of its bonds indorsed, and $2,000,000 of State bonds granted to it directly.

It seems that with ordinary foresight the State officers might have predicted that these railroad companies would default in the payment of interest on these indorsed bonds. Most of their roads were in process of construction, and yielded no revenue; and the mere fact that they found it necessary to call upon the State for aid was indicative of a lack of funds. It might also have been predicted with certainty from the beginning that the payment by the State of the interest on these indorsed bonds would reduce her to bankruptcy. These evils, however, were either not foreseen or not heeded, and the State was compelled to pass through the humiliation which

[1] See Auditor's Report for year ending Sept. 30, 1870.

[2] Laws of Alabama for 1870, p. 89.

inability to meet obligations brings. The Alabama and Chattanooga Railroad Company failed to pay the interest which fell due Jan. 1, 1871,[1] and with this the trouble began. The State took possession of the road, and ultimately sold it, after having paid out nearly a million dollars in interest on its bonds, and after having become responsible for the payment of $312,000 in receiver's fees, and $140,000 in employees' wages. After all this she was still liable for the indorsed and direct bonds, and was obliged subsequently to compromise them all. By 1873 the other subsidized railroad companies had defaulted, and she became responsible for the interest on over $18,000,000 of bonds in addition to the burden of her regular debt. Of course she was obliged to suspend the payment of interest, and her debt thus increased with frightful rapidity from year to year.

The State made many laudable attempts to meet her increasing obligations, and to provide for the payment of her debts in full. The legislature of 1872 passed an act[2] establishing a sinking fund. A tax of one-twentieth of one per cent was authorized to be devoted each year either to the purchase of State bonds or of railroad bonds indorsed by the State. Early in 1873 an act[3] was passed increasing the rate of taxation fifty

[1] See Financial Chronicle for Jan. 7, 1871.
[2] Laws of Alabama for 1871-72, p. 13.
[3] *Ibid.*, 1872-73, p. 4.

per cent. On April 21 of the same year another act was passed designed to reduce very materially the debt itself. It was known as the "4,000 per mile act,"[1] and provided for the exchange of State indorsed railroad bonds for direct bonds of the State, bearing interest at seven per cent in gold, and redeemable in thirty years, the rate of exchange being four thousand dollars of the former for one thousand dollars of the latter. The act further provided that for the first five years after the issue of such bonds, the company to whom they were issued should set apart three-fourths of one per cent of its gross earnings as a sinking-fund for their redemption; and that thereafter five per cent of their gross earnings should be set aside for this purpose. This act was by no means popular, and only three railroads exchanged bonds under it, but by so doing they reduced the State's liabilities $3,468,000.[2]

For the final settlement of the difficulty, however, more radical measures were adopted. Dec. 17, 1874, an act[3] was passed authorizing the appointment of commissioners to liquidate and adjust all claims against the State arising from

[1] Laws of Alabama for 1872–73, p. 45.

[2] The three roads were: The South and North Alabama Railroad, the Mobile and Alabama Grand Trunk, and the Savannah and Memphis. The total amount of new bonds issued was $1,156,000, and the total amount of indorsed bonds retired was $4,624,000. — Financial Chronicle, June 19, 1875.

[3] Laws of Alabama for 1874, p. 102.

bonds issued or indorsed. Three commissioners were accordingly selected. After devoting two years to their task, they reported a plan for the settlement of the debt, which plan was communicated to the legislature by the Governor, and on Feb. 23, 1876, embodied in a funding act.[1] Previous to this a new constitution had been adopted which prohibited the State from engaging in any works of internal improvement, or from lending her credit to any individual association or corporation. It also limited the amount of debt that might be contracted to $1,000,000.[2]

The following are the chief features of the funding act: —

1. All the indorsed railroad bonds except those held by the Alabama and Chattanooga Railroad were omitted from the provisions of the act. These, with accrued interest, amounted to $4,705,000.

2. The ordinary debt of the State was described as class "A." For the principal of this, new bonds were to be exchanged, dollar for dollar, to be dated July 1, 1876, to be payable in thirty years, and to bear interest at two per cent for five years, three per cent for five years, four per cent for the succeeding ten years, and five per cent thereafter until maturity. The authorized bonds of this class aggregated $7,127,709. The interest

[1] Laws of Alabama for 1875-76, p. 130.

[2] See Art. IV. Sec. 54; and Art. X. Sec. 3 of the constitution of 1875.

which had accrued for a number of years was repudiated.

3. The bonds issued under the "4,000 per mile act" were designated as class "B." The amount recognized was $1,192,000, in exchange for which new bonds to the amount of $596,000 were authorized to be issued, to bear interest at five per cent, but to be in other respects like those in class "A."

4. As class "C" were designated the bonds indorsed for the Alabama and Chattanooga Railroad. These amounted to $5,300,000, and they were authorized to be exchanged for new bonds aggregating in amount $1,000,000. These bonds were to mature in thirty years, and to bear interest at two per cent for the first five years, and at four per cent thereafter.

5. The indebtedness to the educational fund amounting to $2,810,670, and five per cent State certificates amounting to $1,040,000, were to be treated in the same manner as the bonds in class "A."

In payment of the $2,000,000 of bonds issued directly to the Alabama and Chattanooga Railroad Company, land granted to that company, variously estimated in amount at from 500,000 to 1,200,000 acres, was turned over to the bondholders.

Summarizing the above, we have the following table,[1] showing the amount of the old debt and the

[1] Taken from the Financial Chronicle for Jan. 13, 1877.

amount of new bonds authorized to be issued for their payment: —

	Old debt.	New debt authorized.
Five per cent State certificates	$1,040,000	$1,040,000
Educational fund indebtedness	2,810,670	2,810,670
Total of class "A"	7,416,800	7,127,709
Total of class "B"	1,192,000	596,000
Total of class "C"	5,300,000	1,000,000
Total	$18,759,470	$12,574,379
Unprovided for except as above explained [1]	2,000,000	
State indorsements left unprovided for	4,705,000	
Total old debt (principal) .	$25,464,470	

If to the difference between these two totals be added the overdue interest on these various classes of bonds, the amount of Alabama's repudiation will be not far from $15,000,000.

[1] See page 62.

VII.

THE CAUSES OF REPUDIATION.

CHAPTER VII.

THE CAUSES OF REPUDIATION.

THE phase of financial history which has been described with considerable detail in the preceding chapters must now be viewed as a problem for solution. We have stated the facts, and we must now seek their explanation. The universality of the repudiation movement in the South, and the fact that in all but two cases it appeared in each of the States affected at nearly the same time, suggest common causes, and invite an investigation below the surface of the facts which have been presented. It is only when we view the facts as one whole and attempt their classification and analysis that their true meaning and explanation become apparent. It is the purpose of the present chapter to reveal the general causes of repudiation, and to determine their permanent or adventitious character.

As a rule, the repudiating States have attempted to shield their honor behind the bulwark of the law. Only in one or two cases have they let their debts go by default without so much as attempting a legal justification of their acts. We have seen

that in some cases the alleged illegality of the bonds repudiated was a mere pretext, without any real foundation in fact; but that in others the allegations were true. Of this latter class of cases Arkansas, Georgia, and South Carolina furnish us with examples. In the first-mentioned State the ayes and nays had not been recorded in the case of the law authorizing some of her bonds, whereas her constitution expressly provided that they should be recorded. A subsequent act of the legislature deprived the State of all moral justification for repudiation, but could not affect the constitutionality of it.

In the issue of the railroad bonds which Georgia had indorsed, and was called upon to pay, a variety of irregularities had been practised. Those issued to the Alabama and Chattanooga Railroad were second mortgage bonds, and the constitution provided that the State's indorsement should be placed only upon first mortgage bonds. The act authorizing the State's indorsement of the bonds of the Bainbridge, Cuthbert, and Columbus Railroad provided as a condition of such indorsement that twenty miles of said road should first be completed. As a matter of fact, however, not a foot of the road was ever built, while the bonds were issued, indorsed, and negotiated. As a condition of the issue of bonds in aid of the Cartersville and Van Wirt Railroad, the act provided that an equal amount must be invested by private parties.

Legislative investigation showed, however, that the bonds had been issued in entire disregard of this clause of the law. The name of the Cartersville and Van Wirt Railroad was changed to that of the Cherokee Railroad, and new bonds were issued to it under the new name, though all that the law authorized had been issued to the road under the old name.

The illegality discovered in South Carolina consisted in one case in the issue of $2,000,000 of bonds under an act which authorized the issue of only $1,000,000, and in another case in the unconstitutionality of an act passed for the relief of the treasury:[1]

For the purpose of our investigation into the legal justification of the States in the repudiation of these and similar issues, they may be classified under the following heads: —

1. Those which were not authorized by any law.
2. Those which were authorized by laws which were unconstitutional.
3. Those in which the laws authorizing them had not been strictly complied with.

The point to be decided in each of these cases is whether the *State* or *innocent bondholders* should have been made to suffer any loss that the illegality in question entailed. In cases in which a State is one of the parties we have very few legal decisions to guide us to the opinions of the courts on

[1] See page 91.

this point, for very few such questions have been adjudicated, owing to the immunity of States from suits brought by individuals. Cases of municipal bonds precisely similar, however, have been repeatedly tried in the courts, and from these we may discover the law upon the subject.

Cases coming under the first of the above heads are easy to decide. No court would hold a State responsible for bonds for the issue of which she had given no authority whatever. Purchasers are bound to see to it that the bonds in which they invest have been authorized by law. To fail here is a negligence for which they alone are responsible, and for which they must and should suffer. Of course an action for fraud might be brought against State officers who would presume to negotiate such bonds; but such an action would concern them as individuals, and not as State officials. The authority of the State's agents is of necessity defined by law, and the interests of good order and careful legislation, as well as the safeguards of liberty, demand that these laws should be strictly obeyed.

On this point Burroughs, on "The Law of Public Securities," p. 5, says: "All who deal with a public agent or officer must take notice of his powers. He derives his authority from the law which authorizes his appointment. No person may profess ignorance of the extent of the powers of a public agent. (State *v.* Hays, 53 Mo., 578). A private agent acting in violation of specific instruc-

tions, yet within the scope of a general authority, may bind his principal; the rule as to the effect of a like act of a public agent is otherwise. The latter is clothed with duties and powers specifically defined and limited by public law, ignorance of which cannot be presumed in favor of those dealing with him. This is the reason of the difference between public and private agents. The powers of the one can always be known; the other may not be."

Cases in which the law authorizing the issue is unconstitutional are more complicated. The decision is easy and simple, provided the law is declared by competent authority to be unconstitutional before the bonds are negotiated. Such a case would really belong under the first head, for a law which has been declared unconstitutional has no more binding force than if it had never been passed. But suppose the bonds have been regularly and properly negotiated, and have come into the hands of innocent purchasers, before the constitutionality of the law authorizing them has been questioned; and suppose further that the law, though plainly unconstitutional, has not been declared so by competent authority. It was under precisely such conditions as these that the repudiated unconstitutional bonds were issued. Are purchasers of bonds bound to consult the records in order to discover whether or not the constitution has been complied with in the passage of the law,

or is it sufficient for them to see to it that there is a law authorizing the bonds which they have purchased?

It must be admitted that the answer to this question is not easy. On the one hand, it may be asked of what good are constitutions unless the State insists upon their being complied with to the letter; and on the other hand, it may be asked whether the State is not estopped from pleading the unconstitutionality of a law by the action of her officers who negotiated the bonds, and by that act certified to their validity.

At this point it becomes necessary to distinguish carefully between the second and third classes of cases into which illegal bonds are classified, — in other words, between violations of a constitution and of a statute law. In the latter class of cases, as we shall presently show, the ordinary executive officers of the State are competent to decide whether or not the law has been complied with; in the former class of cases they are not. The power to decide concerning the constitutionality of a law, in all the States of our Union, has been conferred upon some court, and that court cannot, in the nature of the case, pronounce a decision until some case has been brought before it, and that may not happen until years after the bonds have been negotiated and have passed into the hands of innocent holders. Unless, after a law has been pronounced unconstitutional by competent authority,

it becomes of none effect, and all acts based upon it lose their binding force, it is difficult to see how constitutions render any protection to people of the State. The preservation intact of the protective character of the fundamental law of a State seems, therefore, to demand that, in the class of cases under discussion, the bondholders shall suffer the loss, unless other more important interests of the State are thereby jeopardized. The State constitution is a part of the law which defines the duties of officers, and purchasers of bonds are bound to see to it, not only that their purchases are authorized by a statute law, but that such a law does not conflict with the constitution of the State. The law relating to this point is summarized in "Law of Public Securities," by Burroughs, in the following words: "The defects of want of power arising from a violation of some constitutional provision are, however, of such a character that no defence avails the holder. That he has paid value for the bonds in good faith, and has no actual notice of the defect, is immaterial. Every person is bound to know the law, statute and constitutional, and this constructive notice is as effectal as an actual notice."

The third class of cases mentioned above brings to our attention irregularities in the compliance with laws authorizing the issue of bonds. The number of these is great; but one principle has directed decisions on such points in the case of

municipal bonds, and that alone needs to be considered. The question to be decided in these cases is, whether the holders need to go back of the recitals on the bonds, in case such recitals state that the law has been complied with. The first case brought before the Supreme Court of the United States involving this question was that of Knox County, Indiana, *v.* Aspinwall, *et al.*[1] Since this furnished the precedent which has been closely followed by that court, it will be worth while to give an account of it.

This county refused to pay bonds that had been issued in aid of a railroad on the ground that the county commissioners who issued them had failed to comply with that clause of the statute which required that certain notices be given before the matter was put to a vote of the people. The following is the opinion of the court: "Where the statute of a State provided that the Board of Commissioners of a county should have power to subscribe for railroad stock, and issue bonds therefor in case a majority of the voters of the county should so determine after a certain notice should be given of the time and place of election, and the Board subscribed for the stock and issued the bonds, purporting to act in compliance with the statute, it is too late to call in question the existence or regularity of the notices in a suit against them by the holders of the coupons attached to the

bonds, who are innocent holders in this collateral way. In such a suit, according to the true interpretation of the statute, the Board were the proper judges whether or not a majority of the votes in the county had been cast in favor of the subscription to the stock. The bonds on their face import a compliance with the law under which they were issued, and the purchaser was not bound to look further for evidence of a compliance with the conditions to the grant of the power."

In the case of Colona *v.* Eaves, 92 U. S. 484, Mr. Justice Strong confirmed the decision in the case of Knox County, etc., in the following words: "Where the legislative authority has been given a municipality, or to its officers, to subscribe for the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent condition, such as a popular vote favoring the subscription, and where it may be gathered from the legislative enactment that the officers of the municipality were invested with power to decide whether the condition precedent had been complied with, their recital that it has been, made in the bonds issued by them, and held by a *bona fide* purchaser, is conclusive of the fact and binding upon the municipality, for the recital is itself a decision of the fact by the appointed tribunal."

Mr. Justice Bradley, in Humboldt Township *v.* Long, *et al.*, 92 U. S. 642, says: "We have sub-

stantially held that if a municipal body has lawful power to issue bonds or other negotiable securities, dependent only on the adoption of certain preliminary proceedings, such as a popular election of the constituent body, the holder in good faith has a right to assume that such preliminary proceedings have taken place, *if the fact* be certified on the bonds themselves by the authorities whose primary duty it is to ascertain it."

Another case bearing upon the rights of *bona fide* bondholders was that of Hackett *v.* Ottawa, 99 U. S. 86. In this it was shown that the bonds had not been issued for the purpose prescribed in the act. The court held that in this case the bondholder was not compelled to go back of the recitals on the bonds. It said in substance that when the officers of a municipality recite in bonds issued by them that they are for a purpose municipal or public, this recital cuts off all inquiry as to the purpose for which they were issued.

In another case Chief Justice Waite said: "When the certificate of the proper officer is found on the bond, the purchaser need not inquire whether what has been certified to is true. As against a *bona fide* holder, the public is bound by what its authorized agents have done and stated in the prescribed form." [1]

[1] Antony *v.* County of Jasper, 101 U. S. 693.

Our State courts have, in the main, followed the principle laid down in these decisions, though they have not given quite so broad an interpretation to the term "irregularities."[1] A distinction must, of course, be made between mere irregularities in compliance with the law and acts which fall entirely outside of the authorization of the law.

These decisions certainly warrant us in concluding that officers authorized to issue bonds have power to determine that the conditions of the law have been complied with; that the decision of such officers to that effect is binding upon the State; and that the recitals of the bonds duly signed by such officers that said conditions have been complied with, is the only evidence which the bondholder must produce in order to establish the validity of his bonds.

If the specific cases of repudiation on the grounds of illegality described in preceding pages be adjudged in accordance with the principles of the law here laid down, it will be found that some of them were legally justifiable, but that others were not. It is not essential to our present purpose to show which ones were thus justified and which were not: the fact just stated is sufficient. Something more is needed to establish the invalidity of a bond, even in the eyes of the law, than the fact that in its issue the precise

[1] Burroughs: "Law of Public Securities," p. 320 *sq.*

conditions of the law authorizing it have not been complied with. The rights of innocent and *bona fide* bondholders are not thus summarily to be disposed of. It is necessary for this purpose to establish that the law authorizing the bonds was unconstitutional, or that the alleged irregularity in their issue amounted to the setting aside of the law entirely, and then it is a question upon which the Supreme Court of the United States and our State courts do not agree — whether the recitals of the officers authorized to issue the bonds do not bind the State.

The question arises at this point whether it is expedient that the State should in all cases take advantage of her right, and repudiate whenever such a proceeding would be sanctioned by the courts. The answer to this question should depend upon the gravity of the case. It would be unwise to lay it down as a general principle that the State should adopt this course of procedure or the opposite *in all cases*. It is necessary to discriminate, and in each case to set over against each other the advantages and disadvantages of repudiation. While the presumption in the circumstances supposed may be in favor of repudiation, it is easy to adduce cases in which such a course would greatly injure the State, as well as do rank injustice to her creditors. The equities of the case and the interests of the State's credit should have great weight in doubtful cases.

In equity inquiry should always be made into the innocency or fraud of the creditor. In many cases in this country men have secured the bonds of the State through connivance and fraud, without parting with a dollar of their money. Cases of this sort should not, of course, be treated with leniency, and repudiation of the debt would be the proper course, unless greater injury than that involved in the fraud would thereby come to the State. On the other hand, it is beneath the dignity of the State and injurious to public morals to repudiate the bonds of an innocent holder who has parted with his money in good faith and possibly in part from patriotic motives. Only when the higher interests of the State clearly demand such a procedure should she take advantage of her legal rights under such circumstances.

A second point worthy of careful consideration in case the illegality of a debt has been established, pertains to the question whether or not the State has enjoyed the benefit of the borrowed money. In some of the cases referred to the repudiated bonds had been issued in aid of railroads and other public works, from which the State received no benefit whatever; in others the money obtained by the loan was used for the payment of the ordinary and regular expenses of the government. The question naturally arises whether the State is justified in refusing to pay back money which, though obtained by her officers without her consent, was

nevertheless accepted and used by her. In the case of an individual we would have no hesitation in answering this query in the negative. The fact that the principal received and expended the money which his agent borrowed in his name, even though without his consent, would, in the judgment of any civilized community, make the debt binding and legitimate. The case of a State is not strictly analogous to this, because the acceptance and expenditure of the money directly are impossibilities. Agents must act for her here as well as in the matter of borrowing, and collusion between these two sets of agents is possible, if there are two sets; and, of course, if the same persons both borrow and expend the money, further investigation would be needed in order to discover the obligation of the State. The case of the State, then, is really analagous to that of an individual whose agent borrowed money without his consent, and also expended it. To establish the obligation of the principal to pay the debt under such circumstances, it would be necessary to establish the fact that the agent acted in the expenditure with his consent. In like manner, if investigation develops the fact that money illegally borrowed was expended with the full and legally expressed consent of the people's representatives, it is difficult to escape the conclusion that the State is under moral obligations to pay the debt.

Aside from the equity of the case, a failure to

observe which will disgrace the State and inflict a blow upon public morality, the maintenance of the State's credit demands that she shall not repudiate her bonds except in the most extreme cases. It is probable that repudiation, even under such circumstances, would render it difficult to borrow again. The money-loaning public is extremely sensitive. It does not easily appreciate nice constitutional and legal points. Especially difficult is it to convince this public that the State which accepts and uses borrowed money, and then refuses to pay it back in due time, is not guilty of robbery. The fact that irregularities in the issue of the bonds have taken from the creditor all remedy in the courts, does not prevent him from making the determination that he will not again risk his money in such a manner. Even under circumstances the most favorable to the State, repudiation shakes the public faith in public securities.

Our own experience in this matter cannot be conclusive on the point under discussion, for most of the cases of repudiation recorded in the previous chapters cannot be legally justified; but it may, nevertheless, be interesting in this connection to note the fluctuations in State securities during a part of the decade of repudiation. The following table was compiled by Hon. Robert P. Porter, and was published in the *International Review* for 1880.

Fluctuations in State securities from 1872 *to* 1879, *inclusive, with the average value for the same time :* —

States.	1872	1873	1874	1875	1876	1877	1878	1879	Average.
Maine . . .	100	100	100	100	100	100	100	100	100
New Hampshire,	100	100	100	100	100	100	100	100	100
Vermont . .	100	100	100	100	100	100	100	100	100
Massachusetts .	103	103	103	103	103	103	103	103	103
Rhode Island .	99	99	99	102	107	110	105	110	104
Connecticut .	99	99	99	103	105	109	106	106	103
New York . .	104	105	106	109	110	113	115	114	110
Pennsylvania .	99	100	100	100	100	100	100	100	99
Maryland . .	102	102	102	102	102	102	102	102	102
Virginia . .	50	42	35	35	44	39	36	36	38
North Carolina,	21	29	21	30	19	24	24	33	25
South Carolina,	34	27	15	28	31	32	31	11	26
Georgia . .	73	87	68	81	98	101	104	107	90
Alabama . .	90	57	25	43	26	26	29	60	45
Louisiana . .	68	50	19	25	35	39	61	67	46
Texas . . .	88	73	83	95	101	101	101	101	93
Arkansas . .	50	30	19	12	15	11	8	7	19
Tennessee . .	65	79	69	38	44	42	35	33	53
Kentucky . .	96	96	98	100	101	101	101	101	99
Ohio . . .	100	101	100	102	107	106	104	106	103
Indiana . .	100	102	100	99	100	100	100	100	100
Illinois . . .	99	95	95	99	101	100	102	103	99
Michigan . .	98	97	94	102	105	104	104	107	101
Missouri . .	94	90	96	95	101	103	104	105	98
California . .	110	110	110	105	105	105	105	105	107

This table clearly shows the deadly influence of repudiation on State credit. It shows also that in this country, at least, the money-loaning public does not distinguish between cases of justifiable and unjustifiable repudiation, but has condemned all indiscriminately.

The inquiry upon which we entered in this

chapter has advanced but one step. The illegal character of bonds is but one of many causes of repudiation in this country. In some cases, as we have seen, illegality was simply alleged as a pretext to cover up the real condition of affairs. In all cases it was accompanied and re-enforced by other more or less potent causes. In our further inquiry we must go behind and below the phenomena, and look deeper into the public mind for the explanation which we seek. Four topics must be considered in this connection: The heavy pressure of debts on the repudiating States; the corruption of State officials; the financial crisis of 1837; and the Civil War.

No one can examine the facts presented in the previous chapters without being impressed with the magnitude of the debt of the repudiating States. At about the time of the appearance of the sentiment in favor of repudiation in these States, the debts which were imminent, including both those recognized and unrecognized, were somewhat near the following figures: In Arkansas, $8,600,000, besides about $5,000,000 of bonds issued to railroads; in Florida, $4,850,000; in Georgia, $11,135,500; in Louisiana, $22,500,000; in Mississippi, $7,000,000; in Virginia, $45,000,000; in North Carolina, $15,000,000; in South Carolina, $15,850,000; in Alabama, $11,345,000; in Tennessee, $43,950,000.

If we reckon the average rate of interest paid at five per cent, which is below the correct figure, the annual interest charges represented by these debts

are about as follows: In Arkansas, $433,000, besides about $247,000 for which she was liable in case the railroads defaulted; in Florida, $242,000; in Georgia, $556,000; in Louisiana, $1,121,000; in Mississippi, $350,000; in Virginia, $2,250,000; in North Carolina, $750,000; in South Carolina, $792,000; in Alabama, $567,000; in Tennessee, $2,192,000.

The total amount raised by taxation in these States at about the time to which these figures refer indicate that such interest charges as these were really seriously burdensome. When Florida was threatened with an annual interest charge of about $200,000, her total revenue was less than $100,000 per annum. The interest on Virginia's debt in 1870 amounted to about $2,000,000, while her income for 1869 did not reach $3,000,000. An interest charge of $700,000 and more hung over North Carolina when her taxes yielded only a little over $500,000. The interest on Alabama's funded debt amounted to over $500,000 at a time when her income from taxation amounted to only a little over $800,000.

Such facts as these do not furnish an argument in favor of repudiation. The States could unquestionably have endured a much heavier weight of taxation, and the enormous increase in the wealth of the Southern States during the last decade shows that they were becoming year by year better able to bear heavy burdens of indebtedness. It would in every case have been possible

to arrange with bondholders for the payment of both principal and interest at some future time when the resources of the State should be greater. Any bondholder would have preferred such an arrangement to the repudiation of his bonds. Other expedients might have been devised. But while these facts do not furnish an argument in favor of repudiation, they certainly help to explain the fact. It is not surprising that tax-payers sought ways and means of avoiding such burdens, and that they grasped at every straw which offered them hope.

It is still easier to understand the sentiment in favor of repudiation when we remember that in most cases the debts which gave the greatest weight to this burden were rolled upon the shoulders of the States by defaulting and bankrupt railroad or banking corporations whose enterprises the State had attempted to advance by indorsing their bonds or by issuing bonds to them directly. The people felt that these debts were not their own; that they were about to be heavily taxed in order to foot the bills of speculators who had very likely emerged from a cloud of bankruptcy with well-lined pockets. The matter was made still worse by the fact that in most cases the property mortgaged to the State for security was of little value when the mortgage was foreclosed. Georgia secured some railroad property, the utilization of which plunged her still more deeply into debt.

Tennessee had the same experience. In many cases the roads mortgaged defaulted before their completion, and the State obtained by foreclosure only a few miles of graded track which could be sold simply for railroad purposes, and that at a great sacrifice, and which the State was in no condition to utilize for herself. When the enterprises aided were banks, as in the cases of Mississippi, Florida, and Tennessee in part, the matter was still worse, for usually the State had invested heavily in bank stock, which became worthless when the banks failed. It is exceedingly hard for a man to pay a note which he has indorsed for the accommodation of a friend. Unquestionably many such debts would be repudiated if their payment could not be enforced by the courts. It is very much harder to pay heavy taxes on account of the failure of corporations in which one has no direct interest. The former sacrifice is compensated in part by the gratitude of the friend, and the hope that he may pay back the sum in the future; but for the latter there is no compensation of a positive nature. Public honor, or the desire to save the State from the disgrace of breaking her plighted faith, are the only motives to the payment of such a debt.

A second source from which we may draw for a partial explanation of the repudiation sentiment in some of our States is the belief in the extravagance and corruption of the State governments. That this belief was often well founded is attested

by an abundance of facts in the case of at least two States.

While the greater part of the debt of South Carolina was being contracted, the legislature of that State was in the hands of a horde of ignorant men who cared only for their own gains. The report of the Joint Investigating Committee on the public frauds of South Carolina contains in the space of about nine hundred pages a record of fraud and extravagance which is unequalled in the annals of this country, and hardly surpassed in those of any other. Speaking of the extravagance of the legislatures of this period as compared with the economy of those of previous periods, a writer in the *International Review*[1] uses the following language: "The old legislature had been contented with five-dollar clocks; the new one purchased six-hundred-dollar clocks. Forty-cent spittoons gave way to eight-dollar cuspidors; four-dollar benches were abolished to give place to two-hundred-dollar crimson plush sofas. The legislator who was content to serve his State upon a dollar chair, in the new era leisurely lounged upon sixty-dollar plush Gothic chairs; eighty dollar library desks took the place of four-dollar pine tables; and twenty-five-cent hat pegs were abolished to give place to thirty-dollar hat-racks; ten-dollar office desks were abandoned, and others costing one hundred and seventy-five dollars substituted; coats that formerly hung

[1] Hon. R. P. Porter in November number, 1880.

upon fifty-cent coat-hooks were, under the new dispensation, carefully put away in one-hundred-dollar wardrobes; cheap matting was taken up and body Brussels substituted; the finest Havana cigars took the place of clay pipes, champagne of whiskey, six-hundred-dollar mirrors of four-dollar looking-glasses, while six-hundred-dollar brocatel curtains and lambrequins adorned the windows from which formerly hung two-dollar curtains." [1]

During this carnival of extravagance enormous debts were contracted, the amount of which could not be accurately estimated on account of the confusion of the public records. Legislative committees unearthed the most gigantic frauds, and completely destroyed the confidence of the people in the validity of the greater part of the State debt.

The investigations made by legislative committees of the State of Georgia revealed a most suspicious mass of facts concerning the official acts of those concerned in the negotiation of many of her bonds. One of her governors practically confessed his complicity in bond swindling schemes by resigning his office and fleeing the country. Other officials were suspected of the same crime, though direct and absolute proof was not obtained. Whatever the facts may have been, it is unquestioned that the impression went forth among the people of the State that they had been fearfully swindled by those to whom they had intrusted the reins of

[1] For further facts, see Appendix VI.

government. Fraud was also charged against the State governments of Alabama, Tennessee, and Louisiana.

It is not necessary for our purpose to show that these charges were true. It is sufficient to indicate the fact that the impression that they were true, or the fear that they might be true, was prevalent among the people, and was intensified in their representatives. That such an impression tended to create a sentiment in favor of repudiation, there can be little doubt. Overburdened tax-payers, even though their respect for public morality may be very high, will not fail to give themselves the benefit of any doubts concerning the justice of the burdens they are called upon to bear.

No analysis of the causes of repudiation in this country can approximate completeness which does not include the characteristics of the two periods of our history in which these events occurred. A reference to the dates of the passage of the repudiation acts which have been described, will show the limits of these periods. To the first belong Florida and Mississippi. The former State adopted the constitution which committed her to repudiation in 1845, and the message of the Governor of the latter State, in which repudiation was first suggested, was given to the public in January, 1841. Most of the other States passed their repudiation acts in the decade between 1870 and 1880.

In the early forties, the first period to be considered, the people of our country were in the midst of the gloom and despair which succeeded the terrible financial crisis of 1837 and 1838, and which brought financial ruin to thousands. To appreciate the state of the public mind at this time, it is necessary to recall the circumstances which led to that crisis.

The seven years preceding were declared by a prominent judge of that period,[1] to be "one of the most extraordinary financial periods — perhaps the most extraordinary one — which the world has ever seen." Ever since the close of the War of 1812, and the Napoleonic wars in Europe, our country had experienced unparalleled prosperity. Our population had increased from seven to seventeen millions. Manufactures had been successfully started, and were producing a quantity of some commodities sufficient not only to supply our own wants, but also to supply the material for a respectable export trade. Our commerce had been enormously increased as a result of this and such other causes as a vast increase in the *per capita* production of agricultural products, the opening up of our mineral resources, the establishment of peaceful relations with England and France, and the natural development of American enterprise. New territories of vast extent had been opened to enterprise and speculation by an

[1] Judge Curtis in *North American Review* for January, 1844.

enormous extension and improvement of the means of communication, notably by the building of canals and railroads. Cities had grown up in an incredibly short time, in the midst of wildernesses. In fact, everything in the line of material prosperity seemed to be within our grasp, and we became a wonder to ourselves and to the rest of the world.

The writer just referred to eloquently described our attainments during this period in the following words: "The stories of the old poets concerning heroes who built cities by the shore of the sea, and, by their mighty energies and the direct assistance of the divine power, created states that were secured by laws, supplied by industry, and adorned with the arts of life, do not sound incredible or strange in our ears. In the lifetime of one generation we have seen an extent of wilderness that seemed illimitable divided into cultivated farms; solitary inland seas made glad with the presence of an active and prosperous commerce; great rivers, whose waters formerly reflected only the shadows of the forest, running by the luxurious abodes of civilized men, and bearing the varied products of labor; cities which are already worthy of the name, filled with an industrious and intelligent population, springing up in the solitary places; nay, great States, whose people are reckoned by millions, brought into existence and established during this short period."

The remarkable financial era of which Judge

Curtis spoke was produced in part by this great material progress, and in part by a combination of circumstances which, if not entirely fortuitous, was at least very unusual. The use of bills of exchange became general during this period, which vastly increased our facilities for foreign commerce, and was equivalent to a large addition to our commercial capital. While this change in the methods of exchange was in progress, the war against the United States Bank was being carried on. As a result of this, deposits were transferred to State banks, and local banks were multiplied all over the Union. The nominal capital of banks of this class was increased from one hundred and ten to two hundred and twenty millions between the years 1830 and 1837. The country was flooded with the notes of these banks, which, together with the practical increase in our circulating medium, caused by the rapid development of the credit system, produced inflation and an unnatural rise of prices which exaggerated the substantial progress which the country was experiencing. In addition to all this the States, in 1836, received subsidies from the treasury of the United States, in the form of shares of the surplus revenue, which was then being distributed.

Under the influence of all this stimulus both States and individuals became intoxicated, and contracted obligations in the most reckless fashion. The former embarked in gigantic enterprises in

the form of public works, to pay for which millions of dollars of bonds were issued. These sold readily at good prices in the markets of Europe. Financiers the world over had unbounded confidence in our good faith, for we had just (in 1836) performed the unusual feat of paying off a national debt; and the same circumstances which gave us confidence in ourselves dispelled any doubts which might at one time have entered their minds concerning our ability to pay almost any amount of debts.

The influx of the millions of foreign capital which represented the proceeds of these bonds, added to the stimulus produced by the inflated bank issues, the government subsidies, and the real industrial progress of the nation, and the result was an epidemic of reckless speculation which spread throughout the business world, and did not exempt from its influence the humblest classes. In the words again of Judge Curtis, "Some who, in former times, would have found occupation suited to their daring tempers in the field, embarked their recklessness in commerce; others, whose rashness under ordinary circumstances would have been soon checked by disaster, or prevented from showing itself by want of means, found that their energy and love of adventure had made them leaders; and others still, whose fears would have been roused by danger, lost all hesitation in the general confidence. Men acted as if a

short and secure road to wealth had been discovered on which all might travel, and he who went fastest would be the first to reach the desired end. The result was such a morbid tendency to excess in all financial affairs as had never before been witnessed. . . . All uses of capital seemed to be followed by certain and large returns, and men were, therefore, eager to borrow. All pursuits appeared to be safe and prosperous, and, therefore, those who had money were desirous to lend it. So much security was felt that little was asked; and to obtain money nothing more was necessary than to show the lender that it was to be employed in some magnificent scheme which stood well with the large expectations of the time, and was in season with the glorious summer of men's hopes."

Such was the state of the public mind on the eve of the great financial crisis of 1837. Only a few of the most conservative and far-sighted saw that these great hopes and expectations and this unparalleled prosperity were based upon a greatly inflated currency and a superstructure of credit which could not long sustain the weight which was resting upon it. The first intimation of the true state of affairs came from London, when the Bank of England stopped the credit of several American banking houses. This act was rendered necessary by the flow of specie which endangered the bank itself.

At this very time, notwithstanding the inflation of our currency and the constant influx of foreign capital, the demand for money in this country exceeded the supply, and this cutting off of the means of foreign exchange through instruments of credit, together with Jackson's specie circular, made a demand for specie which could not possibly be supplied. At once there was a general call for the payment of obligations, and the banks were besieged for the coin which they did not possess and could not obtain. Temporary expedients, such as the issue of something over a million sterling bonds by the Bank of the United States of Pennsylvania, were of little avail, and the inevitable suspension of specie payments came. With it came a general suspension of business.

For several months the people devoted themselves to the payment of their debts whenever this was possible, and to the settlement of their affairs according to the laws of bankruptcy whenever this was not possible. There was a general redistribution of the wealth of the country. Thousands of persons lost the whole or a large part of their property, and, what was equally as bad, no money could be gotten at any price in order to make a fresh start. Even wealthy persons found it difficult to get the money needed for ordinary expenses, and in many States the average farmer and laborer could get no currency at all. "Failures were almost innumerable. Trade had fallen

off, and when prosecuted was hazardous. A deep gloom settled upon men's minds. . . . The people were amazed at their own disasters, and afraid to act in any way lest they should run into new mistakes." The bubble of prosperity had burst, and men's eyes were at last opened to the true state of affairs.

Many of the States were no better off than individuals. Pennsylvania, Maryland, Michigan, Mississippi, Illinois, and Indiana defaulted in their interest payments. The period of debt contracting had suddenly come to an end. No more money could be borrowed, even to meet the comparatively small amount required for these interest payments. The only resort was to increased taxation, and that on a much diminished taxable basis. The feelings of tax-payers may be imagined. These debts had been contracted for public works which the people had expected to be productive of great wealth. It had not for a moment been imagined that they could be the occasion of an increase in the tax levy; "and when, the means of the State exhausted, it was discovered that the moneys borrowed must be paid out of ordinary revenue, the public was filled with consternation." It is scarcely surprising that at such a time creditor should have been synonomous with enemy, and that a public creditor, — especially when the claim which he held was believed to be tainted with fraud, as in the case of the bonds which had been

issued to the banks, and were a partial cause of their disasters,—should not have been given a fair hearing. Sound reasoning and the triumph of the highest moral principles will be sought in vain in the average man under such circumstances.

It is, of course, greatly to be regretted that Mississippi and Florida did not follow the good example set them by the other States which were suffering from the same malady. They issued due bills or interest certificates for the sum which they found themselves unable to pay, and in one way and another passed through the ordeal with honor and credit intact. The renewed prosperity of succeeding years enabled them to repair the damages of this period, and to meet with ease all their obligations. Mississippi and Florida might have done likewise had not the cry of illegality been raised against their bonds. The people of these States were unable, under the circumstances, to resist the temptation to repudiation which this pretext furnished them, especially after the question had gotten into politics and the fate of party measures had been staked upon it. What Mississippi might have done under other circumstances it is useless to inquire, but that the state of mind of her citizens induced by their disasters was a more potent cause of repudiation than the alleged illegality of her bonds, no one who studies the subject at this distance of time and in the light of historical facts can doubt.

Turning now to the second group of States, whose acts of repudiation, as we have seen, were passed for the most part in the decade between 1870 and 1880, we note that all, with the single exception of Minnesota, were seceders from the Union in 1861. This fact at once suggests the question whether there is not a relation of cause and effect between the disasters which these States suffered during the Civil War and the period of reconstruction and their acts of repudiation. The answer to this question will appear in a consideration of the effect upon these States which may be fairly attributed to the events of this unfortunate period in our history.

1. First of all we note that the civil war greatly reduced the taxable basis of these States. This is made evident by the following table, which shows the total assessed valuation of property for taxation purposes in the States enumerated for the years 1860 and 1870.[1]

[1] These figures include the assessments both of real estate and personal property, and so the difference between the figures for 1860 and 1870 may be partially explained by the emancipation of the slaves, who in 1870 no longer appeared in the item of personal property, but who, nevertheless, should not be left out of any estimate of the tax-paying power of the Southern States. The inflation of the currency in 1870 offsets this error partially. The assessment of real estate — which was not affected by the disappearance of slaves from the category of property — shows a decrease, not so great as that indicated in the table, but one which was, nevertheless, enormous.

	1860.	1870.	Per cent of decrease.
Virginia	$657,021,336	$505,978,190	23
North Carolina	292,297,602	130,378,190	55.4
South Carolina	489,319,128	183,913,327	62.4
Georgia	618,232,387	227,219,519	63.2
Florida	68,929,685	32,480,843	52.9
Alabama	432,198,762	155,582,595	64
Mississippi	509,472,912	177,278,890	65.5
Louisiana	435,787,265	253,371,890	41.9
Arkansas	180,211,330	94,528,843	47.5
Tennessee	382,495,200	253,782,161	33.7

2. The debts of these States were increased enormously during this period, as is evident from the following table: [1] —

	1860.	1870.	Highest point reached by the debt.
Virginia	$31,779,062	$47,390,839	$47,390,839
North Carolina	9,699,000	29,900,045	29,900,045
South Carolina	4,046,540	7,665,909	24,782,906
Georgia	2,670,750	6,544,500	20,197,500
Florida	4,120,000	1,288,697	5,512,268
Alabama	6,700,000	8,478,018	31,952,000
Mississippi	None	1,796,230	3,226,847
Louisiana	4,561,109	25,021,743	40,416,734
Arkansas	3,092,623	3,459,557	18,287,273
Tennessee	20,898,606	38,539,802	41,863,406

These increased debts are not all, of course, to be attributed either directly or indirectly to the Civil War, but a very large proportion of the increase is thus attributable. A considerable portion of it represents interest which accrued during the years of the war, the States being utterly unable to pay during that period. This item of increase

[1] Taken from R. P. Porter's article in *International Review* for November, 1880.

was very great in States like Virginia and Tennessee, whose ante-war debt was large. Another large item of increase is attributable to the period of reconstruction and of carpet-bag rule. A part of this represents expenditures which were necessary in order to put the wheels of State governments again into operation, but another and a larger part represents the extravagance of the carpet-bag *régime*. Both of these items are referable directly or indirectly to the Civil War. Other debts were contracted during this period in aid of genuine public works, and, having no connection with that struggle, should not be considered here.

3. The Civil War destroyed the idea of State sovereignty, which the South had cherished in ante-war times, and, as a natural and logical result of this, weakened the feeling of State responsibility. Especially did the States believe themselves devoid of responsibility for the increase of debts due to the interest which accumulated during the war and to the extravagance of the carpet-bag *régime*. Virginia's debt controversy concerned this very point. The Riddleberger bill, which for a long time constituted the ultimatum of a large party in that State, was based upon a calculation of the indebtedness of the State which left out of account the interest which accumulated during the war and the interest on that sum since the war days. Repeatedly have

the Southern States disclaimed responsibility for certain of the debts contracted during the period of reconstruction. The military governments, and many of those elected during the carpet-bag *régime*, were quite generally regarded as usurpations maintained by the force of the federal government, and for whose acts the true body politic of the State itself was not responsible.

4. The fourteenth amendment to the constitution forced these States to repudiate the debts which had been contracted in the interests of the rebellion. Viewed from the standpoint of the States' honor, it was not easy for loyal Southerners to distinguish between these and their other public debts. It was, on the whole, easier for them to repudiate the latter than the former, since some of them were owed to Northern capitalists, and the desire to avenge themselves upon the North for the disasters they had suffered was strong.

When all these circumstances are considered in connection with the fact that the war of secession was regarded in the South as a righteous struggle, brought on that section through no fault of its own, it is not surprising that we find the Southern people in a state of mind easily susceptible to arguments favoring repudiation.

In this review of the causes of repudiation no account has been taken of fundamental differences of character between the Northern and Southern

people. It has been alleged in the course of these debt controversies that the Southern character was unreliable in the matter of debt payment. The fact that only Southern States repudiated during that period of financial embarrassment which succeeded the crisis of 1837 might be regarded as proof of this unreliability. Pennsylvania, Indiana, and Illinois were in as great financial straits as Mississippi, but they paid their debts in full, while Mississippi repudiated a portion of hers. In Maryland, on the border line between the North and South, a party arose which favored repudiation, but it was unable to carry a majority of the people or of the legislature with it. In speaking of Mississippi, Judge Curtis in the article already several times referred to said :

"An intelligent foreigner, who feels a just indignation when he hears of repudiation, probably knows the difference between a Highland chieftain and a London merchant, but is profoundly ignorant that differences quite as great exist between the people of Mississippi and the people of Massachusetts. Probably there are few points in which these differences would be so likely to be exhibited as upon the matter of paying debts. To pay debts punctually is *the* point of honor among all commercial peoples. But the planters of Mississippi do not so esteem it. They do not feel the importance of an exact conformity to contracts. It has not been their habit to meet

their engagements on the very day if not quite convenient. Certainly they attach no idea of dishonesty to such a course of dealing. They mean to pay, but they did not expect when they contracted the debt to distress themselves about the payment. If a friend wants a thousand dollars for a loan or a gift, he can have it, though perhaps a creditor wants it also. We do not mean to intimate that there are no high qualities in such a character, but they are different from those which make good bankers and merchants; and, therefore, bankers and merchants ought not to expect such men to look at a debt just as they do."

This statement was written in 1844, and probably expresses what was true at that time. Very likely the Southern method of looking at debts and the obligation to pay them was different from the Northern, owing to the differences between the industrial characteristics of the two sections. This fact should be taken into consideration in accounting for the repudiation acts belonging to the first period described above. It should not be given equal weight, however, in the period after the war. That the industrial character of the South had then changed to a considerable extent is evinced by the character of the public works to the construction of which the States lent their financial aid. The desire to build railroads and canals on a large scale indicates the presence of the commercial spirit which, according to Judge

Curtis, characterized the North in 1844. Ever since the close of the great civil struggle the North and South have been growing alike in occupations, spirit, and character; and though the new South was only in its early infancy in the seventies, the commercial spirit which characterizes it had begun to exert its influence. Whatever effect it may have had, however, was more than neutralized by the influences which have been described as growing out of the Civil War. Up at least to the close of the period of reconstruction, these were all powerful in shaping the thoughts and motives of the Southern people.

The various forces which have been reviewed, and which all must admit have been potent causes of repudiation, should not be overlooked in any historical estimate of the moral character of the actions of the repudiating States, or of the honesty and integrity of the people who compose them. Many of them were certainly temporary and adventitious. It is highly probable that the combinations of circumstances which have been described as characteristic of the forties and the seventies will not occur again in our history. We should, therefore, be slow to conclude from past experience that our Southern States are not to be relied upon for the payment of their debts, nor should we go to the other extreme and, placing implicit confidence in our people's integrity, con-

clude that no safeguards against repudiation are needed. It is the purpose of our concluding chapter to show that such safeguards are desirable, and to suggest those which seem best adapted to our conditions.

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